The Washington Monthly

DECEMBER 1981/$2

inside a Senate hearing, the White House's first fop. the case for selling justice. how SATs are ruining the GNP. Ronald Reagan, Anne Gorsuch and the budget cut that may poison your children.

PLUS, WHY THE JUDGE DID IT ON T.V.

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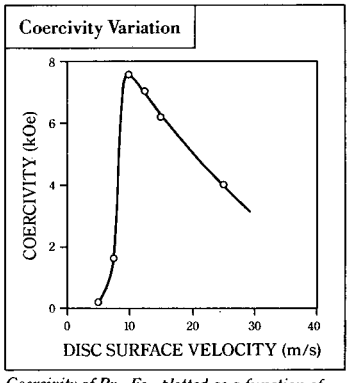
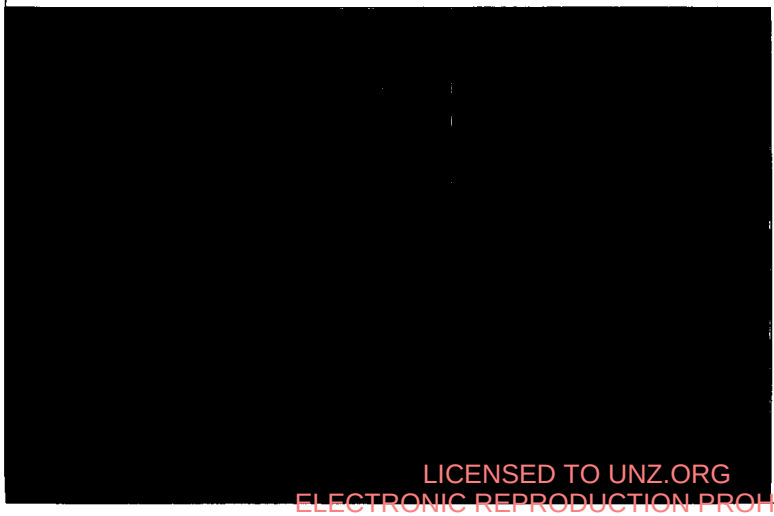
The Critical Interval

There has long been a need in the industrial world for low-cost, high-performance permanent magnets. Recent discoveries at the General Motors Research Laboratories show promise of meeting this challenge by the application of new preparation techniques to new materials.



Coercivity of $Pr_{0.4}Fe_{0.6}$ plotted as a function of disc surface velocity.

Color-enhanced transmission electron micrograph of melt-spun $Nd_{0.4}Fe_{0.6}$ having 7.5 kOe coercivity.



TWO properties characterize desirable permanent magnets: large coercivity (magnetic hardness or resistance to demagnetization) and high remanence (magnetic strength). Higher-performance magnets are required to reduce further the size and weight of a wide variety of electrical devices, including d.c. motors. Such magnets are available, but the cost of the materials necessary to produce them severely limits their use. The research challenge is to select, synthesize, and magnetically harden economically attractive materials of comparable quality.

Prominent among alternative materials candidates are alloys composed of iron and the abundant light rare earths (lanthanum, cerium, praseodymium, neodymium). Investigations conducted by Drs. John Croat and Jan Herbst at the General Motors Research Laboratories have led to the discovery of a method for magnetically hardening these alloys. By means of a rapid-quench technique, the researchers have achieved coercivities in Pr-Fe and Nd-Fe that are the largest ever reported for any rare earth-iron material.

Drs. Croat and Herbst selected praseodymium-iron and neodymium-iron based upon fundamental considerations which indicate that these alloys would exhibit properties conducive to permanent magnet development. These properties include ferromagnetic alignment of the rare earth and iron magnetic moments, which would foster high remanence, and significant magnetic anisotropy, a crucial prerequisite for large coercivity.

That these materials do not form suitable crystalline compounds, an essential requirement for magnetic hardening by traditional methods, presents a major obstacle. Drs. Croat and Herbst hypothesized that a metastable phase having the necessary properties could be formed by cooling a molten alloy at a sufficiently

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rapid rate. They tested this idea by means of the melt-spinning technique, in which a molten alloy is directed onto a cold, rotating disc. The cooling rate, which can be varied by changing the surface velocity of the disc, can easily approach 100,000°C per second. The alloy emerges in the form of a ribbon.

THE researchers found that variations of the cooling rate can dramatically affect the magnetic properties of the solidified alloys. In particular, appreciable coercivity is achieved within a narrow interval of quench rate.

Equally remarkable, synthesis and magnetic hardening, two steps in conventional processing, can be achieved simultaneously.

"X-ray analysis and electron microscopy of the high coercivity alloys reveal an unexpected mixed microstructure," states Dr. Croat. "We observe elongated amorphous regions interspersed with a crystalline rare earth-iron compound."

Understanding the relationship between the coercivity and the microstructure is essential. The two scientists are now studying the extent to which the coercivity is controlled by the shape and composition of the amorphous and crystalline structures.

"The development of significant coercivity is an important and encouraging step," says Dr. Herbst, "but practical application of these materials requires improvement of the remanence. Greater knowledge of the physics governing both properties is the key to meeting the commercial need for permanent magnets."

THE MEN BEHIND THE WORK

Drs. Croat and Herbst are Staff Research Scientists in the Physics Department at the General Motors Research Laboratories.

Dr. Croat (right) received his Ph.D. in metallurgy from Iowa State University. His research interests include the magnetic, magneto-elastic and catalytic properties of pure rare earth metals and their alloys and compounds.

Dr. Herbst (left) received his Ph.D. in physics from Cornell University. In addition to the magnetism of rare earth materials, his research interests include the theory of photo-emission and the physics of fluctuating valence compounds.

Dr. Croat joined General Motors in 1972; Dr. Herbst, in 1977.

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Letters

Heart to Hart

The adulation you lavish on Senator Hart recalls Henry Luce's plumping of Nelson Rockefeller ["Should This Man Be President?," by Robert M. Kaus, October]. The worst, absolute *worst* things Kaus could think of to say about Hart were that he was too trusting of federal bureaucrats, was awfully serious, and, finally, wasn't Tolstoy (though he *is* capable of growth and development). The photos were lovely, just lovely. Now Hart might make a fine president, but this sort of thing ill becomes you. Stop backing major candidates. It isn't your function, and if you pull shenanigans like this again, I will cancel my subscription.

COLIN MACKINNON
Arlington, Virginia

Kaus's article is very much on the mark in almost every respect. There is only one point on which I would differ, and it may be more a matter of interpretation than of verifiable fact. It has always seemed to me that Hart's difficulty with the Common Man and the apparent absence of an emotional connection with the human element of policy problems is a combination of genuine shyness and a conviction that too much that is hurtful has been accomplished by legislators who let their emotions and political instincts govern what their minds should decide. I suspect that if there is one part of that article that he will find genuinely painful to read, it is where Kaus diagnoses an appearance of remoteness. Kaus is probably right, but underneath there is a very compassionate character screaming to be let out. I suppose that is all to the best for his future, if he can just find some way to unbutton.

KEN BANTA
Chicago, Illinois

Since the *Monthly* disdains the conventional wisdom, I was surprised to read, in your story on Gary Hart, that "he is not content to recycle the same old ideas, like an Edward Kennedy." That sentence recycles the same old cliche—not because of what it says about Senator Hart, but because it is, on the plain facts, inaccurate about Senator Kennedy.

One of the major new ideas of economic policy—deregulating sectors of the economy and restoring price competition—was advanced by Kennedy in 1973. The proposal was developed in extensive hearings and resulted in airline and trucking deregulation primarily because of Kennedy's unremitting commitment. This year, Kennedy is sponsoring sunset legislation to set a timetable for reviewing each federal agency to decide whether its record justifies its continued existence. He has also been the Democratic leader within the Senate and probably within the entire Democratic party in the effort to deal with crime—which is hardly a traditional liberal issue. On questions such as determinate sentencing, reform of the federal criminal code, and bail reform to end money bail while keeping violent suspects in jail pending trial, Kennedy has been practical, innovative, and anything but the captive of standardized preconceptions. He has been emphasizing since 1977 the need to strengthen conventional military power; to shift resources away from gold-plated, overcomplex weapons systems; and to develop a ready deployment force.

He has neither a progovernment nor an antigovernment ideology. He has been for deregulation where it will work, and for wage, price, profit, and interest-rate controls in the 1980 campaign when that policy made sense. (Events may prove, I suspect, that it was a far better economic course than the direction in which the so-called Republican "new ideas" have taken us.) Kennedy's national health insurance proposal relies on and encourages competition among private providers—and, the hard numbers show, would actually cost *less* than continuing the present system, in which no one has an incentive to keep costs down. As I know him, Kennedy is a person of both real principle and a healthy pragmatism. He has been taxed, often in good humor, for occasionally missing a verb, but he deserves credit for consistently carrying out the commitment of which he spoke at the Democratic Convention—which is not to "outworn programs, but to values that will never wear out."

ROBERT SHRUM
Washington, D.C.

Mr. Shrum is press secretary to Senator Kennedy.

One small point: You shouldn't make too much of Hart's "free-associating" to Tolstoy from his mention of Isaiah Berlin's essay "The Hedgehog and the Fox." The Berlin essay is *about* Tolstoy. Did you slip for a moment into the Teddy White syndrome? Remember his book on 1968 when he recounts a plane ride with Nixon talking about Aristotle?

RICHARD PARKER
Cambridge, Massachusetts

Horsefeathers

The article on the air controllers' strike was a travesty ["Featherbedding in the Tower," by Jonathan Alter, September]. The military controllers are currently operating under exceptional safety standards, and handle only half of the regular flights at the largest 22 airports. Even under these conditions, which their predecessors would have found a great relief, they are overburdened and strained. They have yet to go through the additional strain of wintertime weather, when planes have their most frequent instrument landings. Meantime the

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secretary of transportation, who would surely be given an optimistic forecast, says it will take two years and $100 million to put the system back in order.

When this wrecking crew gets done with savaging government operations, you can congratulate yourselves on adding to the misinformation that produced disaster and human misery.

JAMES SCHNEIDER
Arlington, Virginia

The author replies:

I never suggested that the FAA will not have to rebuild the system. My point was that *not nearly as many* new controllers will be required to replace the strikers, thus proving featherbedding. PATCO charged understaffing; the truth was the opposite. The FAA had staffed for when it was busiest and then left it that way when the workload was light—a classic problem in the government. Contrary to Mr. Schneider's implication, there is no evidence as of this writing of substitute controllers' jeopardizing air safety.

Welfare Redux

The least pejorative term I can use to describe the editor's views on social security as welfare is "naive" ["Tilting at Windmills," September]. The current work force is not so much the victim of previous generations' cupidity as it is its beneficiary. Haven't the present members of the work force, who are now paying for social security, benefited from the contributions of those responsible for the tremendous surge of industrial output between 1950 and 1980? In other words, isn't the pie one hell of a lot bigger because of the efforts of past generations of workers?

JOHN YUCCAS
Longville, Minnesota

I was appalled to read the editor's reply suggesting yet another definition of the word "welfare." I cite the *Random House Dictionary,* 1966, "*on welfare,* receiving financial aid from the government or from a private organization because of hardship and need." The operational point is "because of hardship and need." By your own definition of welfare, the operational question is not need but rather did the recipient pay for a benefit himself or herself. If not, it is welfare whether or not a need exists.

I suggest you adhere to the generally accepted view—welfare is public or private help based on need as determined for each recipient. All other transfer programs based on group identity (veterans) or past employment in covered occupations (social security) or occupational history (coal miners or merchant mariners) should be called by the currently popular term "entitlement programs." I don't think the use of the proper term will inhibit you from continuing to object to entitlements being received by unworthy persons.

FRED R. BROWN
Washington, D.C.

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Jonathan Moore

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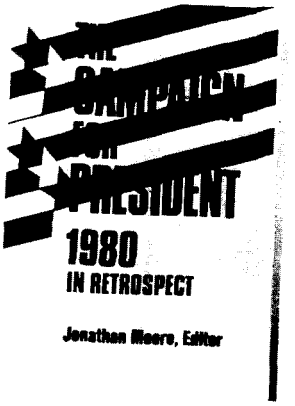

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Tilting at Windmills

You may recall that one reason for our government's ignorance of the Iranian people's hatred for the Shah was that only a handful of our embassy staff in Tehran spoke Farsi, Iran's language. Of the 872 Americans at our embassy in Cairo, exactly 15 are fluent in Arabic. Now you understand why even the television networks seemed to have a better idea than the State Department about what was going on the day Anwar Sadat was shot.

What do you suppose those 857 non-Arabic speakers do all day? If they can't talk to average Egyptians, to whom do they talk? The answer is, of course, to themselves; and to other diplomats and the local English-speaking elite, who seldom have even the slightest idea what the masses are thinking. This combination of overstaffing and linguistic ineptitude is true of most of our embassies. . . .

On a related topic, there are bills pending in both houses of Congress to outlaw the disclosure of the names of American intelligence agents. The Senate bill is the better of the two, making a crime of disclosure with "intent to impair or impede" intelligence work, instead of the House's vague "reason to believe" that intelligence would be damaged. But neither bill makes what is, I think, the big distinction between truly covert agents and intelligence officials stationed in the embassies, whose identity is easily ascertainable to anyone with even a casual interest. Our embassies employ hordes of host-country citizens—in Egypt the number is 500—to perform "administrative support" functions (i.e., chauffeur, servant, etc.). These locals usually know a lot more English than we know of their language. So they quickly tune in to embassy gossip and learn the identities of CIA officials in the building.

What they sometimes don't know—and what should be protected—are the names of covert agents working *outside* the embassy compound, especially their fellow countrymen working secretly for us. Obviously disclosure of this information could have lethal consequences for the people really doing the spying; *this* is the kind of disclosure that must be punished. . . .

Recently there was an item in this space about Winston Lord and the importance of names bearing the right aristocratic ring. I'm happy to report that Mr. Lord's father, Oswald Bates Lord, whose first wife was Mary Pillsbury Lord, has continued to honor the family tradition by marrying Comfort Tiffany O'Conner, daughter of the late Gurdon Saltonstall Parker. . . .

If you sometimes suspect there is more bureaucracy than fighting ability in the modern American military, here is confirmation of your fears. The Army now has more lieutenant colonels assigned to personnel management (903) than to leading infantry (838). It has twice as many in materiel management (1,148) as in artillery command (547). . . .

Last January, when the West Virginia Supreme Court was debating whether to allow cameras in the courtroom, Justice Richard Neely said he opposed the idea so vehemently he would remove himself from any hearing being televised.

Recently Neely wrote a book, *How Courts Govern America.* CBS News called and said it

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wanted to film Neely in action. When the appointed hour arrived and the cameras rolled, did the justice get up and walk out? No. Even when the lights were turned up to a glaring 200 watts, and another justice objected to the distraction of camera crews moving around, Neely steadfastly refused to desert his post. . . .

People ask why I write so much about World War II. In fact they don't see half of what I write, since that much is cut by the young editors who assist me here and who, in the great tradition of loyal subordinates, are always trying to keep the old man from making a fool of himself.

The reason I think World War II is worth so much attention is that it was the one time in my life when government really worked. So as someone who wants government to work again, I try to think about why it worked then. We went from the worst naval defeat in our history (Pearl Harbor) to the greatest naval victory (Midway) in just six months. Pearl Harbor is best understood as the ultimate product of American bureaucracy; but after it, everyone stopped behaving in self-serving fashion and focused on the task at hand. Midway could not have been won if our Hawaii shipyards had not performed a backbreaking miracle repairing the carrier *Yorktown* (badly damaged at Coral Sea), accomplishing in three days a job that today would probably take the average shipyard three years—and then be done sloppily, with extravagant cost overruns.

At the beginning of the war, in fact, many of our weapons were disastrously ineffective. Our torpedoes had an aversion to exploding on contact with enemy vessels. Our P-40 fighter apparently was designed to provide introductory target practice for young Japanese pilots. Our main tanks had a gun that moved up and down but not around. Within a year we had weapons that worked.

Why? Simple patriotism is one answer—instead of thinking Me-First, most people really did act out of higher loyalty to their country. Another reason is that the politicians and bureaucrats in Washington and the welders in the shipyards almost all had sons or brothers in the armed forces—relatives whose lives depended on everyone back home doing his job well. What can we learn from this that will help the country now? Respect for patriotism wouldn't be a bad beginning—patriotism that does not blindly deny what's wrong with the country, but that takes pride in what's right and is determined to guard against any danger.

Then comes the toughest challenge. Where do we find today's equivalent of the sons and brothers who will not come back if you screw up? I think the answer is for people to realize that their sons and brothers—and now daughters and sisters—are again in peril today. Some genuinely stupid decisions are being made by the Reagan administration, decisions that, like the blunders that led to Pearl Harbor, threaten you and the people you love. For an example, take a look at Paul Goldberg's article (page 30) on how the administration is decontrolling pollution at the very time the danger from toxic chemicals is growing—and see if that blunder isn't something you want to fight to reverse. . . .

The day before *The Atlantic*'s Stockman issue appeared, I had lunch with a senior administration official. During most of the conversation he politely stonewalled me—I got little beyond the administration line, little about what he really thought. Today I would probably get nothing, for the most certain effect of Stockman's confessions to William Greider will be to eliminate all traces of candor in an administration that was already much less open to the press than was Carter's. . . .

I try to keep readers advised of the latest developments in the world of conferences, so I was embarrassed to discover that I neglected to mention the Fifth American Imagery Conference, "Imagery in the Eighties," Akhter Ahsen, Ph.D., chairperson. This important conclave was "designed to provide a forum for experiential and theoretical dialogues across the broad range of mental imagery processes involving top experts . . . the most exciting and newest imagery theory and techniques for growth, therapy-related and experiential applications. . . ."

First Fop Jerry Zipkin—see Blythe Babyak's article on page 50—may best reflect the true social attitudes of the Reagan administration. But Charles Z. Wick, Ron's intimate and head of the International Communications Agency, runs a close second. He recently defended the lifestyle of the Reagans and their friends by saying it played the same role for the public that movies did in the Thirties:

"During the Depression," Wick said, "when people were selling apples and factories were still, and guys were jumping out of windows because they lost everything, people would go to the movies. They loved those glamour pictures showing people driving beautiful cars and women in beautiful gowns showing that people were living the glamorous good life. . . ."

In our Reagan Scorecard issue last February, we said one test of the administration's good faith would be whether it pursued welfare for the rich with the same vigor it attacked welfare for the poor. Quickly we noted one of its first failures in that regard, hasty abandonment of the effort to make private pilots pay a reasonable share of the cost of private aviation.

But then late last summer I was cheered to learn that, as part of the second round of budget cuts, the president announced he would once more try to impose airport user fees and taxes on private

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aviation. What has happened to the initiative? It has come to a "dead halt," according to *The Washington Post*'s Thomas B. Edsall—because only one Republican on the House Ways and Means Committee is willing to support even a watered-down measure. And that member, Barber Conable, told Edsall "the administration had better evince more interest than just requesting it." . . .

In "The Case for Selling Justice," page 24, Jonathan Alter describes the insanity of personal injury litigation. If you need more convincing, consider this quote from an interview the *Denver Post*'s Jack Kisling recently conducted with Melvin Belli, the King of Torts. In the course of describing how lucrative his business is, Belli offered some examples. "Take quads," he said, tenderly referring to victims of quadriplegic paralysis. "You can't lose 'em. My firm got more cases this year than it's ever had. We just got one for $3.5 million."

If Alter's proposals to reduce litigation are adopted, what will we do with all the surplus lawyers? I hope some will become entrepreneurial businessmen, revitalizing existing companies and creating new ones so we can produce the kind of wealth we need to pay for the social programs I believe in. But there are other useful things ex-lawyers could do. I like the example offered by Jack Smith, a Pittsburgh lawyer who took a drastic cut in salary to become a police officer.

We need smart police officers far more than we need smart lawyers. There are no criminal cases for lawyers to try—and crime is not deterred—when suspects are not even found because of inadequate police work. Another job ex-lawyers could take is teaching. One positive thing law schools do is teach lawyers how to think—exactly what most of the education system, especially the schools of education that "train" public-school teachers, fails to do.

I can hear you laughing at the thought of lawyers giving up their fancy salaries to serve as police officers and teachers. But this country is simply not going to work again until there is—among lawyers and everyone else—less concern with money and more concern with getting out of parasitic occupations and into constructive jobs that really count. . . .

Parenthood is, of course, an intolerable burden on lawyers and other affluent professionals who want to party by night and climb the career ladder by day. Baby sitters and day-care centers are available, but they hardly cover the full range of parental duties.

So I'm happy to report that parents can now contract out for yet another service—sending care packages to the kids when they're away from home. A Bethesda, Maryland, firm will pack and mail chocolate-chip cookies and all the rest for you; you never have to lift a finger.

What's next? Well, how about letter-writing services using those "personalized" computers:

DEAR BILLY. HOPE YOU ARE HAVING FUN AT CAMP, BILLY. BILLY, WE REALLY MISS YOU. MAY I PERSONALLY ADD, BILLY, THAT YOUR MOTHER (WHOM YOU CALL "MOM") LOVES YOU.

Along the same lines, there could be hire-a-phone-call services. "Just wanted to ask how you're getting along at school, Jeff. Excuse me, I mean Emmett, Jr., somebody switched around the account numbers here. Hope your fractured spine healed, don't let it discourage you from going out for other sports. You're booked in for the weekend at Christmas. Well, I'd like to talk longer, but your parents paid for only three minutes. Bye. . . ."

As we all know, the most vigorous supporters of regulation are the industries that benefit from it. The latest example is the insurance industry, which over the years managed to get all 50 states to enact laws prohibiting insurance agents from reducing their commissions in order to compete for business.

Representative John LaFalce of New York has introduced a bill that would nullify these state laws and permit agents to lower the cost of insurance by lowering their commissions. "Even if we assume a very conservative savings of only three percent arising from agent competition," LaFalce points out, annual savings to the public would be from $5 billion to $6 billion. Insurance industry lobbyists contend, according to *The New York Times*, that competition would "confuse insurance buyers." . . .

The Kaiser Steel Corporation has announced that it will shut down its steelmaking operations in Fontana, California. A year ago, to prevent the shutdown, Fontana plant workers had volunteered to forgo part of their raises for the next three years. But, according to *The Los Angeles Times*, the agreement "was aborted when top steelworkers' union officials vetoed the proposal."

Here is how the workers feel about the results of that veto. John Bard: "Who's going to buy a welder who's 47 years old?" Mike Martinez: "I hate to go home and tell my wife." Alfred Ross: "I've got a wife and two hungry kids—six- and eight-year-old boys—and I need lots of money to keep 'em going. I can't go no place else and get a lidman's job." . . .

In October a rally against the Ku Klux Klan was held in Vancouver, British Columbia. Participating were 500 members of the B.C. Organization to Fight Racism and the People's Front Against Racist and Fascist Violence.

During the rally these two groups took to swinging at each other, and, according to the *Seattle Post-Intelligencer*, "Within seconds of the first blow, several people lay on the ground with their heads bloodied . . . a dozen

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people were taken to the hospital, one with a fractured skull." Imagine how bad the fight would have been if these groups *weren't* opposed to violence. . . .

The art of direct-mail solicitation reached a new low this fall, and it was brought there by our two great political parties. The Democrats sent out a letter in an envelope designed to look as if it carried a government check or official communication. Inside was a letter that began:

"Dear Social Security contributor, Social Security is no longer secure. Unless you and I act—and *act immediately*—Social Security benefits could be drastically reduced or destroyed."

But if this scandalously unfair characterization of Reagan's social security proposal was a new low in direct mail, it was quickly surpassed by a Republican fund-raising letter on simulated White House stationery. It began,

"Forgive me for saying this but you're causing the president grave concern.

"Why hasn't President Reagan heard from you?

"Why haven't you joined him in the Republican Presidential Task Force?

"I can't believe you don't want to wear the President's Medal of Merit.

"It's more than an impressive gold medallion. It's a visible symbol of your personal relationship with President Reagan."

The letter continues in that dunning vein, asking $120 in return for the "Presidential Medal of Merit." It ends,

"Shall I show him [Reagan] your contribution . . . or shall I tell him you've said he must fight alone?

"He's waiting for your answer.

"So is America."

It's signed by Oregon Senator Bob Packwood, chairman of a fund-raising group called the Republican Senatorial Commitee. This letter was a new low not only for direct mail but for Packwood himself, who has in the past had enough dignity not to allow his name to be associated with something in such poor taste. Yet this letter was quickly followed by another, even more embarrassing production over Packwood's signature. It began,

"Recently I have read a confidential defense report that disturbed me very much. Military analysts at the Defense Department utilizing highly sophisticated computers have simulated World War III. And I was shocked at the results. . . .

"Sixty percent of all Americans were killed. While the Soviets lost only ten percent of their population."

Packwood's letter goes on to blame "26 long years" of Senate control by "anti-defense liberals," "anti-defense Democrats," and "pro-appeasement Democrats." Perhaps this is a reference to such squishy peaceniks as Lyndon Johnson, Richard Russell, and Scoop Jackson. The letter then declares (making an interesting conceptual leap from a "computer simulation") that "Six out of every ten Americans would die if World War III broke out tomorrow."

What does the letter recommend—digging a fallout shelter and crawling in? No, sending $150 to the Republican Senatorial Committee. In return you will receive the "highly confidential U.S. Senatorial Report on the Defense of the United States."

This handy document contains "a map of secret Russian military bases," which, I suppose, will enable you to launch a preemptive first strike on your own. Unfortunately it also contains "an explanation of how our defense system works—and where the fatal weaknesses are." Sounds like a lot of Soviet spies will be dashing off $150 checks to the Republicans. In fact they won't. The "official" report is a fiction. It's published by the fund-raising committee itself. . . .

Congress has lowered the effective income tax on businesses. Since this tax applies

DAVID BRODER: "This will be a standard reference."

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to net income, the cut helps only companies that are making profits—that is, companies that can afford to pay taxes. At the same time Congress has raised social security taxes, which must be paid by all companies whether profitable or not.

This is sure to encourage the struggling businessman to get rid of employees—scarcely a good thing for the country at a time of high unemployment. The maximum social security tax goes to $2,170 in January—that means $2,170 from the employee *and* $2,170 from his employer. To give you an idea of how this tax has grown, Ida M. Fuller, the first social security recipient, had paid into the system a grand total of $22 over three years when she retired in 1937. . . .

Jerry Brown has tried to blame the California medfly outbreak on Peru, which he says sent fertile flies instead of sterile ones to the state's control program. According to the *San Jose News*, Peru may be getting a bad rap.

It seems that California bought sterile flies from Hawaii in May, before the crisis became severe. Some genius ordered that the Hawaiian flies be dyed green to distinguish them from fertile flies. The only trouble is, the natural color of a fertile medfly is green.

Now as we know, in California sex roles have been blurred to a considerable extent. So no one in state government seemed to notice the flaw in this plan. No one except Cherryl Denny, an entomologist with the medfly control program. On May 6 she wrote her superiors pointing out the error. They boldly swung into action, changing the dye color to orange. They did that on August 4—after 4.5 million flies, many of them naturally green fertile ones mixed in with the artificially green sterile flies, had been released during June and July. . . .

Pick up the Washington phone directory and you'll find 44 columns of numbers for federal offices. In most American towns, you'll find less than one column. But that column will almost certainly include numbers for the Social Security Administration and Internal Revenue Service. Next to the Postal Service, these are the agencies the public deals with most. And like the Postal Service, they once were among the most efficient of government agencies. But in recent years, decline has set in—and one reason is salaries.

As we repeatedly point out, most government employees receive considerably more compensation (especially when you consider benefits) than comparable employees in the private sector. But a few government jobs are underpaid. These include computer experts, the shortage of which is causing your social security check to be delivered to your brother-in-law in Anchorage, Alaska.

In the case of the IRS, the problem is most severe at the revenue agent level. Agents are the people who audit returns—and when they audit wealthy taxpayers, they face highly skilled accountants on the other side of the table. Because good accountants can make much more juggling the books of the rich than working for the IRS, government audits are not what they used to be. As the average taxpayer senses this, his faith in the system declines.

According to *The New York Times*, there will be $310 billion in unreported income this year. This underground economy is the preserve of people collecting cash for their services and paying little or no tax. Phillip K. Michael, Finance Commissioner of New York, estimates the city has $600 million in unpaid taxes due. "If taxpayers feel they're likely to get caught, they'll pay," Michael says. Obviously too many don't feel that way now.

So we do need higher government salaries for people like computer experts and accountants. The solution, instead of blanket raises for everyone (which government employees' unions constantly recommend), is a selective program of more pay for special skills. The government already has such a program for certain medical and engineering positions; it should be extended to the SSA, the IRS, and other agencies where the public interest is threatened by skill shortages (like the Comptroller of the Currency's office, which is responsible for auditing banks and is suffering from the same competition for qualified accountants that plagues the IRS).

The problem of under-compensated federal employees is, however, small compared to that of overcompensation. Any effort to do something about the latter runs up against the problem that the watchdogs are government employees themselves, each with a strong stake in *not* blowing the whistle. Remember how Jimmy Carter tried to eliminate free parking for federal officials? Government employees' unions sued to stop the fees, and guess who ruled in their favor—judges who are also federal employees.

Carter also tried to make annual raises a bit less automatic for federal supervisors in grades 13 to 15. Carter's plan provided that supervisors would be entitled to only half the annual comparability raise, leaving each agency a fund with which to reward those supervisors doing better than the rest. Some would get a full raise, some would get a raise and a half, some would be forced to endure only half an automatic raise.

The General Accounting Office declared this plan illegal. Flat across-the-board raises, given regardless of performance, continue to be the federal norm. Of course the people who work for the GAO are also federal employees.

The real solution to the government's salary problem is, as Nicholas Lemann suggests in this issue, performance appraisal—a lot more of what Carter was trying to instill. Pay more to the people who are good, and only on the basis of whether they work like someone's son's or daughter's life depended on it.

—*Charles Peters*

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INSIDE A SENATE

by Brett Fromson

On the walls of George McGovern's Senate office were two etchings of nineteenth-century trains. In one, a black train rushed through a snow-covered pass. In the other, a single fire-eating locomotive roared along flat steel tracks somewhere in the western plains. "I remember when I was a boy in South Dakota," McGovern said in his High Plains twang, "I'd be awake at night and hear the whistles of those trains blowing through the town."

McGovern was remembering the railroads as I had never known them—majestic, tyrannical conveyors of commerce and culture. My childhood memories were of Penn Central trains breaking down. But soon I'd have to learn more.

It was 1978, and McGovern had just been assigned to the Senate's Joint Economic Committee, where I was a staff aide. I'd been assigned to help look into the railroad business. "McGovern's interested in railroads. I want you to handle him," my boss on the committee had told me. "He's got some vague notions about using the committee as a vehicle for investigating that screwed-up industry."

"I don't know very much about railroads," I replied.

"Don't worry," my boss said. "Neither does he or his staff." I had heard that before.

This is not to suggest the senator was ignorant of rail's economic ill health. He knew from his constituents in South Dakota that train derailments were occurring more frequently than ever, that at harvest time rolling stock was nowhere to be found, and that the state was latticed with thousands of miles of unprofitable, abandoned track. What McGovern needed was to understand *why* the nation's railroads were in such disrepair and what should be done. My job was to find the people and written sources to answer that question.

Up to this point in his career, McGovern had embraced increased federal loans to, and public ownership of, the railroads. He had recently introduced a bill to have the Department of Transportation build rolling stock and provide money to states to buy abandoned rights-of-way. I didn't know how many billions of dollars this proposal would cost, but I doubted that it would help the situation.

McGovern's legislative assistant ("L.A.," in Hill parlance) for energy and transportation,

Brett Fromson was an aide to the Senate's Joint Economic Committee during the Carter administration. This article is adapted from his book, Running and Fighting: Working in Washington, *to be published in January by Simon & Schuster.* *Copyright 1981 by Brett Duval Fromson.*

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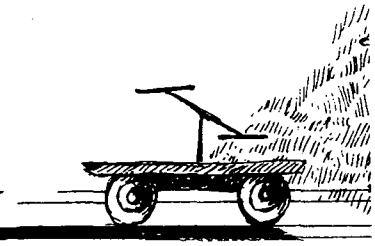
HEARING

How reform got derailed



Robin McIntosh, worked with me at every step. While in theory her responsibility was to McGovern and mine was to the committee, in reality we served each other's interests. A happy McGovern meant a happy JEC, and vice versa. He wanted assistance from JEC staffers to pursue issues his personal aides lacked time or skill to analyze; the committee wanted his name and energy and influence to lend it prestige.

Robin and I first met in the Dirksen Senate Office Building's dismal underground cafeteria. In the past decade the number of congressional staffers has increased much faster than the square feet of office space, so many meetings that demand privacy are held in the cafeterias. Offices are simply too crowded.

The challenge was to get McGovern a hearing so he could examine the railroad fiasco as long and fully as he wanted. We wanted to stir up interest, awaken people to the problem. We also, of course, wanted as much publicity as possible for McGovern and the committee.

Getting McGovern his hearing was no simple task. We could do nothing without the approval of Senator Lloyd Bentsen, the phlegmatic Texas Democrat, chairman of the JEC's subcommittee on economic growth and stabilization—the subcommittee to which McGovern had been assigned. Without Bentsen's permission, McGovern could hold no hearing.

Robin and I discussed how to obtain a hearing for McGovern without bringing Bentsen in to chair it and Bentsen's man on the committee to organize it. If Bentsen horned in on the show, McGovern would lose the publicity and the freedom to study problems that interested him. Robin feared that Bentsen might do just that, because he was concerned with the higher coal rates that railroads were asking Texas utilities to pay.

We spent a fruitless hour planning how to keep the hearing for McGovern. We considered trying to mollify Bentsen with a few witnesses to discuss coal but rejected the idea; let him do his own staff work. We mulled over having McGovern telephone Bentsen and ask straight out, "as a personal favor," for his own hearing but rejected that, too. Senators don't ask for favors unless absolutely necessary.

Finally we hit upon a decent tactic. We would schedule the hearing to be held in New York City on a day we knew McGovern had to be there as a delegate to a United Nations conference on food and famine. We would make it as inconvenient as possible for the mildly interested Bentsen to appear. This would also get us better witnesses (since most railroads have headquarters in New York) and better media coverage (there being fewer hearings in Manhattan than in Washington).

The next day we lunched with McGovern in the senators' dining room, a smaller facility served by a distinctly better (but equally tax-subsidized) kitchen than the Dirksen cafeteria. He was eager for us to get going. Like all Washington politicians, McGovern was in a programmed rush from the moment he got out of bed until he got back in.

McGovern said, "I want you to know you can investigate wherever you want." Robin and I were buoyed to hear this. It meant that McGovern had few set ideas on rail issues. It meant that we would have significant control in forming his hearing.

The Usual Gang of Witnesses

Having scheduled the hearing, Robin and I began reading all the books, articles, dissertations, and hearing transcripts on rail that we could get. We had two months to figure out the politics and economics of a $20 billion industry employing more than 500,000 workers. The industry's pa-

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thetic 1.26 percent rate of return on net investment aside, rail was still a honey pot of considerable size for management, unionized workers, federal regulators, and bankers. No matter how badly rail was doing, its 200,000-mile roadways and innumerable acres of land (some with large mineral and petroleum deposits) attracted many competing interests. We assumed that each would try to use us and McGovern for its purposes.

My first conversation was with a 28-year-old staff aide of a congressional subcommittee with oversight responsibility for railroads. "Since you guys and your committee are old hands at this," I said, "I thought you might give me some advice about how to go at it."

"Very simple," the aide said. "Call the Association of American Railroads, the United Transportation Union, and the ICC. Tell them you want to hold hearings and you'll get your witnesses and testimony."

"You mean they select the witnesses?"

"Yeah, it's standard operating procedure with rail hearings."

"I suppose they could reach our conclusions for us, too," I said, intending sarcasm.

In a chummy voice he replied, "If you want them to help write the committee report, they could. We do that sometimes."

"Thanks," I said, "but we'll get our own witnesses and draw our own conclusions."

I soon learned from friends on other committees that the aide promptly got on the phone and began calling industry cronies, warning them away from the McGovern hearing. He didn't want us upsetting his industry clients, especially at a public hearing.

Because word was out that McGovern wanted to "get the rail industry," we had some initial difficulty arranging witnesses. For a solid week Robin and I spoke with presidents and chairmen of the nation's largest railroads. Each time, no matter how amiable our conversation, it always ended with the executive saying, "I'd be glad to speak with the senator privately, but I don't know about testifying." This response was due not only to the whispering campaign but also a silent agreement among rail management to avoid public dealings with government officials. They and their Washington lobbyists did meet frequently in private with the Interstate Commerce Commission (the regulators) and "friendly" members of Congress.

The relationship between rail business and regulators was like a bad marriage: they often fought intensely in private but divorce and public testimony were unthinkable. They were wretched but mutually dependent. Both feared significant changes like deregulation. The ICC dreaded losing its bureaucratic fiefdom. Most railroads wondered if they could compete in an open market after nearly a century of safe, if debilitating, regulation and subsidy.

So at each step Robin and I had to lobby the lobbyists, assuring them that we would be fair and honest in our dealings. One morning I went to meet with the officials of AAR, whose Capitol Hill headquarters is in a petite wooden townhouse of historic demeanor. This quaint office implicitly proclaims, "We're nice people. We work in a little colonial house, not an impersonal office building. We're folks just like you." The townhouse even has a picket fence around it.

Once inside I tried to assure them that McGovern only wanted their viewpoint, that we would not browbeat a witness for a few headlines. (I hoped I was right.)

"Why don't you just give us the dates and places of the hearings, and I'll get you some industry representatives?" one AAR official insisted. I reiterated that we wanted to select our own witnesses. He and I went on in this vein for half an hour or so before parting cordially. I came away without witnesses, but at least AAR could see that McGovern wasn't proposing to nationalize the railroads. Eventually AAR gave its unofficial seal of approval to the McGovern hearings, but only after our first session. They wanted to size us up.

The Chesser System

Despite McGovern's liberal voting record, the brethren of rail labor were almost as suspicious of us as their boardroom counterparts. Union leaders had much to lose. Protecting their members' high wages (56 percent higher than those for all industrial workers) and antiquated work rules

"IT GOT HEFTY COVERAGE — network TV news footage, ink and pix in the press, mention in hourly radio headlines. 'It' was a pro-ERA rally at the Lincoln Memorial. Guess how many of America's women turned out for this major media event: a) 100,000 b) 10,000 c) 1,000. Right. But look at it this way: If each of the demonstrators can persuade just one state legislator somewhere to vote for it, ERA may still squeak through before June 30, 1982."

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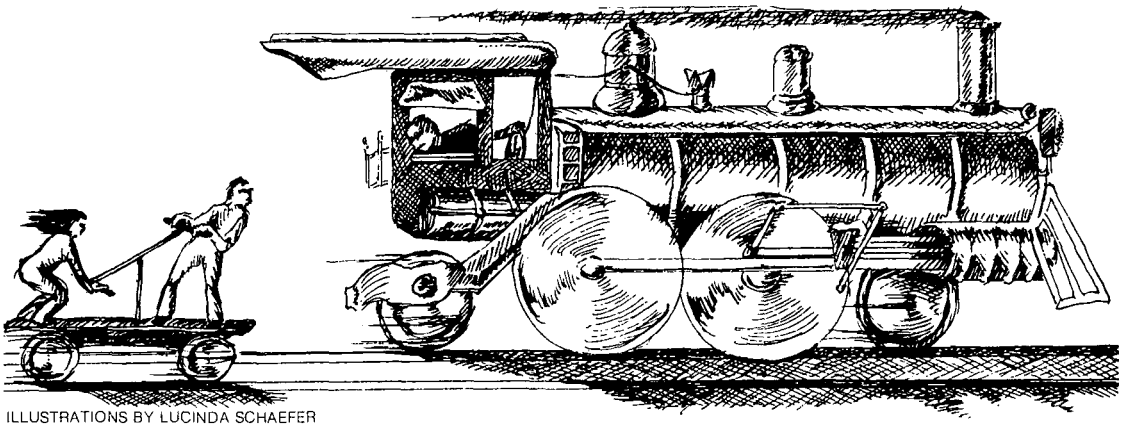

ILLUSTRATIONS BY LUCINDA SCHAEFER

(pay for many engineers and conductors was pegged to a 1910 "hundred-mile day" that now took two or three hours), union bosses had killed any chance for new-job creation or significant productivity increases. Management accommodated labor and then passed through the increased costs via higher freight rates or by using money allocated for track improvement to cover wages. Management's assumption seemed to be that the government would bail them out (without nationalization, of course); labor's premise was that the railroads would have to pay what workers demanded or face a strike. Both sides expected the taxpayer to pick up the tab. So far, the taxpayer had done just that.

McGovern and I met with Al Chesser, president of the United Transportation Union, which represents most rail laborers. I arrived early, hoping to get an extra ten minutes' briefing time with the senator before Chesser arrived. McGovern's briefings were not always thorough. I cannot forget the time he turned to me during a hearing and asked in all honesty, "Is this on inflation or unemployment?"

McGovern, of course, was not alone in his occasional lapses. The daily pace of Congress befuddles even the best. An active legislator like McGovern may speak to or meet with hundreds of people in one day. He cannot always know where he is, why he is there, and what he should say. That's what a staff is for.

I'd set the meeting with Chesser, whom we wanted as a witness, after approximately ten phone conversations with his secretary and personal aide. I never spoke directly with him. He was as well insulated as a senator, and from what people in the railroad industry said, just as powerful in his arena.

I explained to McGovern that in the last ten years union leaders had increased each union member's earnings by 129 percent while total employment in the railroads had fallen by 20 percent. In effect, union chiefs had mortgaged jobs in exchange for wage boosts much greater than the increase in labor productivity. This had been done with the tacit approval of the government regulators and private management, who acceded to labor's demands rather than risk a nationwide rail strike that could paralyze the economy.

McGovern said nothing. He simply nodded his head. Obviously, I wasn't telling him anything new. So I switched to a discussion of work rules that impeded a return to more reliable and speedy rail service. McGovern seemed taken aback by a rule that allowed workers to earn a full day's pay for a few hours' work. But it became apparent that he did not plan to press Chesser on these things now. McGovern smiled and said in his folksy voice, "I think we should just make him feel comfortable. I don't want to scare him away from the hearing."

The senator was explaining to me how Chesser's union had helped him with money and volunteers in the 1972 presidential campaign when suddenly the door opened and in walked Chesser, a large assistant close behind him. Chesser looked like a cross between LBJ and George Meany. Anyone who thinks the movers and shakers of politics are half as handsome as they are powerful has seen too many pictures of the Kennedys.

McGovern started the meeting by asking about rumors of payroll fraud. "Ghosts" (people who drew pay but never showed up for work) were said to be on railroad payrolls. Chesser fielded the question like a veteran; he said that was a management problem, not a labor problem. He added with a smile, "We'd be fools, however, to send the managers to the penitentiary and pretend that all rail labor wears a halo. But you know, senator, that's a can of worms you might

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We met the informant at a Capitol Hill bar. I introduced myself. He said, "You sounded a lot older on the phone, kid." Then we began to talk about the Long Island Railroad.

not want to open at your first hearing."

McGovern said, "Well, Al, we aren't planning to. I just wanted to see if there was any truth to the stories."

Chesser seized the floor and held it for an hour and a half. He rambled on without interruption; McGovern listened politely no matter what Chesser said. Chesser was a man for whom propaganda was fact. He painted himself and his union members as the angels of efficiency, when in fact they had opposed changing the hundred-mile rule or reducing some freight-train crews from three to two men even though such a move had worked well for all the European railroads.

I watched McGovern closely to see if he was buying Chesser's line. McGovern seemed antsy; he kept crossing his right leg over the left and vice versa. However, Chesser didn't want to go. Since McGovern wasn't going to ask him to hurry up, I had to. Senators are accustomed to their subordinates' playing "the heavy."

Chesser was seated directly under a wall clock. I began periodically to glance at the clock and then check my wrist watch. Glance and check. Within a few minutes I had McGovern checking the clock over Chesser's head. Five minutes later, however, Chesser was still running off at the mouth. Then, without warning, Chesser announced, "Well, senator, it's been a real pleasure, but I'm sure you have other appointments."

"Oh, Al," McGovern replied warmly, "I always have time for you." He stood and escorted Chesser to the elevator. As the senator pushed the down button for the labor leader, he added, "You don't have to worry about the hearing. We won't be throwing any curve balls."

Perhaps I should have felt outraged, but I didn't. Robin and I had another way to publicize labor's contribution to the rail disaster—the white paper. This report, a compilation of conclusions and recommendations, accompanies most congressional hearings. It would be prepared before the hearing and distributed to the press. Walking back to the office, McGovern asked me, "What did you think of what he had to say?"

Without hesitation I answered, "I thought it was 90 percent bullshit." McGovern responded with a gleam in his eye, "I think you're right." I knew Robin and I would have carte blanche to write the white paper as we saw fit.

Workers of the World, Vanish!

Some time later Robin and I stumbled upon a source in the federal government who had tales to tell about the nation's largest railroad, Conrail. He wanted to speak privately about payroll fraud. Evidently his superiors didn't want to hear his observations, so he was willing to tell us. He refused to discuss it over the phone. We thought him slightly paranoid but nonetheless agreed to meet him at a time and place of his choosing.

He would not come to our office on a weekday. He wanted to meet at a bar on a Saturday at eleven in the morning. I was not overly surprised that Conrail was under suspicion. This bastard child of the government and the bankrupt Penn Central had the most extraordinary contracts with its workers: unions had obtained *lifetime* wage protection for members laid off or downgraded as the railroad abandoned unprofitable operations. Lifetime employment guarantees could hardly have added incentive for Conrail employees to throw themselves into their work.

Robin and I were excited by this stroke of luck. If we could expose widespread corruption within the nation's largest railroad, McGovern would grab headlines. Our only fear was that payroll fraud at Conrail might overshadow any discussion of regulation, poor management, antiquated work rules, and shortsighted legislation.

Robin couldn't make it, so I took my boss as a witness to verify what was said. We met the

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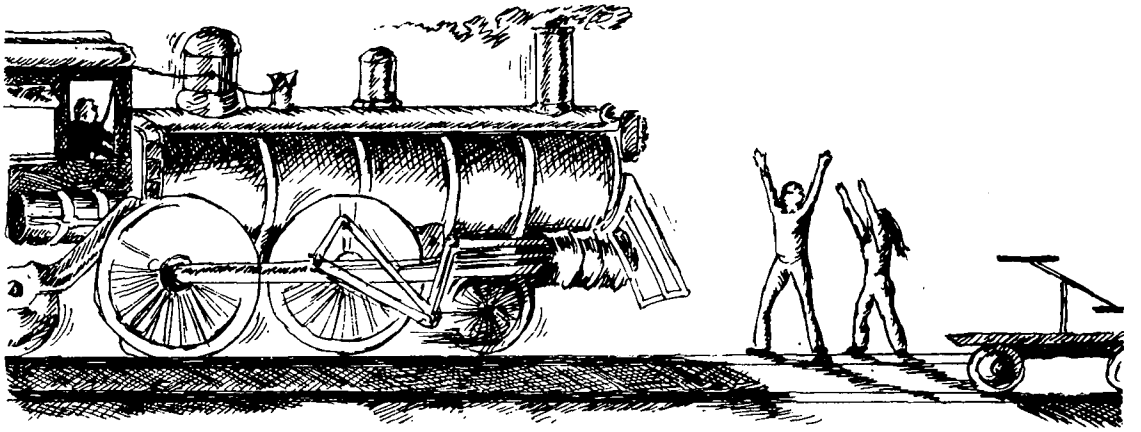

informant at a Capitol Hill bar called The Man in the Green Hat. He was in his fifties with the weathered face of a longshoreman, not smooth like most Washington bureaucrats'. I introduced myself. He said, "You sounded a lot older on the phone, kid." Then we began to talk about the Long Island Railroad.

"Listen," he said, "in 1972 there was a strike at the LIRR. When those men went out they were owed one week's pay. There was one tough son-of-a-bitch in management who said to those 6,800, 'If you want those paychecks, then come to a central pay window with photo identification and you'll get your money.' Well, the LIRR union bosses said, 'No way,' because they knew what would happen if each man went to pick up his own check—the LIRR would see how many phantoms they had on the payroll. Management hung tough and refused to mail out the paychecks or give them to the gang bosses to hand out. The men had to come get 'em."

He paused. "That happened over six years ago. There are still 5,000 paychecks waiting to be picked up.

"Now that was at the LIRR, a punk railroad compared to Conrail. The Justice Department in Philly is worried that there may be bigger wage fraud on Conrail. They've got a grand jury convened. I'd guess that Conrail could be getting ripped off for $100 million a year."

"How do you figure that?" I asked.

"Hey, I don't figure it. I know it. I've worked for the railroads. You know how Conrail distributes its paychecks to the men? Gang bosses pass them out in the yards. Conrail has over 1,000 pay stations. Why, shit, GE operates on six continents and has fewer than half that number of stations."

"Fine," I said, "but what proof do you have?"

"No proof. Just indications. For example, most railroads pay out 40 cents in payroll costs for every dollar of revenue; at Conrail it's 63 cents for every dollar. That's over 50 percent more. Conrail's work rules and wage scales are not that different from other lines'. Figure it out for yourself, sonny."

"How does Conrail payroll distribution work?" I asked.

"The guys at corporate headquarters in Philly send the paychecks to the various yard masters, who distribute them to the gang bosses, who give them to the 'tricks'—the workers, you know. You get in trouble if you open your mouth or pry too much. It's a buddy system. A guy might show up every coupla weeks to pick up his paycheck and spend the rest of his time tending a bar or running his home-improvement company."

"Don't the other workers complain about this?"

"Look," he said, leaning closer, "they don't like it, but they don't want to get their heads cracked either. Nobody's dumb enough to go to the authorities."

"Doesn't management know?"

The man leered slightly. "They got to know. The guys running Conrail may not be too smart, but they're smart enough to figure that out. A lot of them are old union men, still have their union cards. You check this stuff out. It'll be worth your while. Go to Philly. See what the Conrail execs have to say. Ask them about 15,000 missing W-2 tax forms, 15,000 phantoms, ask about a Justice Department investigation."

I called Conrail headquarters the next Monday and made a date with the counsel in charge of labor affairs. I did not mention anything about payroll fraud. Then I called the Justice Department and obtained the names of its Philadelphia attorneys who handle railroad cases. A young lawyer answered the phone. I asked him if he or any of his peers could corroborate my information.

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"No comment," he said.

"Can you deny it?"

"I'll get axed if I say anything."

"Then you're not denying it?"

"I'm not denying anything. Look, where did you get your information?"

"No comment. But thanks for the corroboration."

Robin and I took the Metroliner to Philadelphia, where we met with a Conrail attorney and two labor negotiators. The lawyer was smooth. He used qualifiers like "it could be said," double negatives like "it's not that I'm not in favor of it," and vague assurances like "we'd like to be as much help as we possibly can." His two subordinates, the labor negotiators, were rough. When they wanted to hide something, they just shut up; unlike their boss the attorney, they did not emit soothing platitudes.

Robin and I talked about all labor practices at Conrail except payroll fraud, giving them every chance to bring the matter up. We asked about work rules, wages, benefits, and so on. They stayed away from any discussion of payroll distribution. We had to force the issue.

I began, "In January of last year, a full 13 months ago, the Department of Transportation secretly determined that your railroad was spending 40 percent more than other railroads would for labor forces of the same size. In February of last year, the Department of Transportation met with your bankers, the U.S. Railway Association, to see why Conrail's labor costs were as high as they had been for the old Penn Central. This past November an ICC analyst concluded in a since-restricted memo that Conrail was spending 50 percent more than other railroads to perform the same amount of track maintenance and repair work. Recently, we have learned that a federal grand jury investigation has been under way for months as a result of Conrail's refusal to provide the ICC with documents pertaining to an estimated 15,000 undeliverable W-2 payroll-tax forms. Are you aware of any such investigation, any payroll problems at Conrail, any phantom workers?"

The lawyer was taken aback. He didn't expect us to have so much information. He paused before saying in the unmistakably tense tone of the defensive bureaucrat, "To my knowledge, there have been no payroll problems, and I'm not aware of any investigations."

Robin asked his two underlings the same question. Now frightened, each backed up the lawyer: "If you're asking me, I don't know anything. I have heard that goes on at some railroads."

They were playing us for dummies—or what we were, kids. There was nothing more to say. We caught the train back to Washington. Though convinced they had lied to us, I wasn't particularly angry. It was unreasonable to expect corroboration from Conrail, since it was financially dependent on Congress. They would say anything to protect those subsidies. I couldn't wait until we got them in public.

Peace with Jordan

The days before the hearing were as busy as rush hour at Grand Central Station. McGovern had been incensed by our story and demanded that Conrail's chairman appear for questioning. Robin and I worked madly to set the final witness list and write the white paper. We worked on McGovern's opening statement: "There has never been a more urgent need for Congress to reevaluate the role of railroads in our national transportation network. . . ." The witness list would include Chesser, Edward Jordan (Conrail's chairman), and Robert Reebie. Reebie was a consultant on rail issues and would give a reasonably unbiased evaluation of the industry.

In the report, McGovern called for deregulation so that railroads could make money to improve tracks and rolling stock. He argued that it was unfair and inefficient for railroads to compete for freight customers against barges and trucks, which have rate-making freedom and billions of dollars in federal subsidies to finance the canals and interstate highway system they travel on.

In a surprisingly probusiness stance, we had McGovern rejecting nationalization as too large a drain on the U.S. Treasury—billions of dollars the government didn't have to buy up private railroads and make them into a Conrail of cosmic proportions. McGovern's paper suggested that rates should no longer be set by accountants and bureaucrats at the ICC but by railroad marketing people. Railroads should no longer be forced by ICC rules to use accounting techniques that couldn't tell them whether a train route was making or losing money.

This was pretty strong stuff for a liberal like McGovern. He let us write this in his name, however, because our arguments made sense.

A week before the hearing, we were called by an aide to Connecticut representative Toby Moffett. Moffett had a bone to pick with Conrail for refusing to repair a rail bridge in his district. In exchange for an opportunity to interrogate Jordan during the hearing, Moffett offered to give us a confidential memo issued by bankers to Con-

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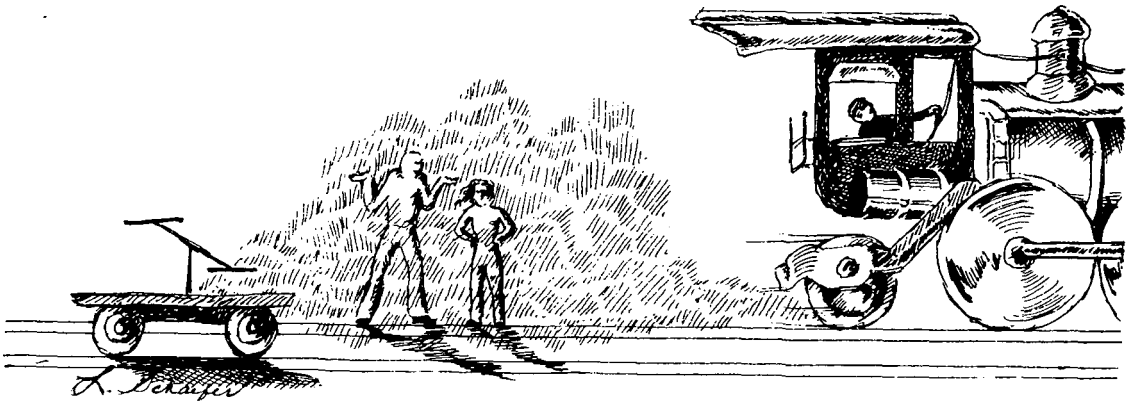

rail's private investors. It suggested that in the next five years Conrail would run a $2.3 billion deficit. This forecast was contrary to Jordan's public assurances that financial prosperity was just around the corner.

Robin and I debated whether to let Moffett in. On the one hand, we wanted to use the fiery congressman and his memo to stimulate public debate about Conrail. We did not, however, want to share McGovern's limelight. In the end, it was not our decision. The senator liked Moffett and wanted to give him a little publicity. We added Moffett to the witness list.

Four days before the hearing, I heard from our source that Jordan had privately fired Conrail president Richard Spence. This was tremendous news. Now we had another mystery to explore, another way to hook the media. We immediately informed the television correspondents who planned to attend the hearing. The senator also called Jordan to make certain that he could still come. Jordan personally assured the senator that he would.

Surrender to Jordan

The night before the hearing we briefed McGovern again—an unusual briefing because it was held at Orsini's, a Manhattan restaurant known as much for the celebrities it attracts as its food. McGovern looked tired, his smile weak and his voice muted. Like most politicians, he had already had a busy day; by 8:30 at night, it was not unusual for him to be fatigued. Aides work hard, but politicians work harder. Unless asleep or in the bathroom, they are on public display all day. We ate pasta and veal and drank a few bottles of red wine. By the time we got to briefing the senator, all three of us were having problems with our short-term memory. The briefing, in fact, never got off the ground; instead we traded political gossip.

The hearing was held in the Federal Building in lower Manhattan. Whereas the shined brass and marble of the congressional structures in Washington give an event grandeur, the Federal Building's bleak architecture made everything seem smaller than life. A flat skyscraper in the middle of a dreary concrete plaza, it is served by slow elevators with fast doors and filled with small fluorescent-lit rooms suffering from low ceilings.

My boss arrived in Manhattan early that morning to monitor the hearing. He, Robin, and I went by cab to the Federal Building at 7 a.m., two hours before McGovern was to gavel the hearing to order. This time was consumed with tasks like finding the building's superintendent to unlock the hearing-room door, having the clerk make copies of the witnesses' statements, and buying film for a photographer to take photos for the inevitable press releases the JEC and McGovern's office would issue.

The television crews showed up by 8 a.m., draped electrical cable on the floor, and focused their floodlights. The suitably attractive television reporters arrived by 8:30.

At 8:55 a.m., a fat, red-faced Conrail vice-president for public affairs handed me a letter.

"Dear Senator McGovern," it began, "The departure of Conrail's president, Mr. Richard D. Spence, requires that the responsibilities he discharged be given immediate attention in the interim in which a successor will be selected. . . . I am sure you will understand why this will prevent my attendance at your hearing."

What were we going to do? I suspected that Spence's departure was merely a weak excuse for Jordan to avoid our questioning, but I was not immediately concerned with that. My main worry was McGovern. What would we say to him? How could we tell him the man to whom he had extended his personal invitation and assurance of fair treatment had double-crossed him at

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But I don't know anything about railroads," I protested to the committee director. "That's all right," he replied. "Neither does anybody else."

the last minute?

We intercepted McGovern at 8:59 a.m., just before he entered the hearing room, which was filled with reporters who already had copies of the letter. The Conrail press flack had been generously distributing them. He wanted to establish Jordan's excuses as fact.

We took McGovern into an empty room nearby to show him the letter. It was a good thing we did. I have never seen a politician as livid as he was at that moment. McGovern could barely talk. His first response was to refuse to seat the Conrail flunkies Jordan had sent in his stead at the witness table. "They don't deserve to participate," he said.

"Wouldn't it be better to have a target for our questions?" I asked.

Robin added, "At least that way we get them out in the open. It'd make better press."

McGovern sat on a desk and contemplated this for a minute or two. On the one hand, his pride was hurt, so he wanted to deny Conrail a seat; yet by doing so he would play right into their hands—let them avoid a public discussion of the problems their railroad represented.

The hearing began ten minutes later than scheduled. McGovern had calmed down by then. As we sat behind him under the hot television lights, McGovern lit into Jordan. "I can only say that I regard the last-minute cancellation . . . as one in a long line of efforts on the part of Conrail indicating that they do not properly recognize their accountability to the Congress that has so generously subsidized their operations."

The cameras rolled as McGovern made his statement; Robin and I grinned at each other, expecting fireworks later on. First, however, we were to get an overview from Robert Reebie. We'd put Reebie ahead of the others as a way to re-brief the senator during the hearing itself.

When Chesser testified, he didn't say anything worth remembering, staying away from labor's role. "You talk about featherbedding," he said. "The most secure place for an executive today is to get to be a railroad executive." His tactic in defending his union's behavior was to testify about everything except organized labor.

McGovern got to one of Jordan's flunkies, John Sweeney, about 10:30 a.m. With emotion and economy of words the senator began, "Here we have the largest single rail system in the country propped up by a massive and unending investment, and it suddenly announces the departure of the man responsible for daily operations. In a similar incident Conrail, without explanation, fired R. P. Wille, assistant vice-president for auditing, last February, shortly after the emergence of the W-2 payroll problem that we have heard about for some time.

"In January 1977, a full year before Conrail found itself with 15,000 undeliverable W-2 tax forms on its hands, the Department of Transportation determined that Conrail's predecessor, Penn Central, was spending about 40 percent more than other railroads in terms of labor/cost/revenue ratios. A month later the DOT met with the U.S. Railway Association to ask whether the association had examined Conrail's labor costs to ascertain if this labor/cost/revenue ratio still prevailed. Last November, an ICC financial analyst concluded that Conrail was spending 50 percent more than other railroads to perform a given amount of track maintenance and repair work.

"The Senate Appropriations Committee, which was considering a $300 million appropriation for Conrail, was not informed of Conrail's payroll problem until I found out about it earlier this month and one day before the mark-up of the legislation. It was only then Conrail submitted an agenda, a totally unidentified four-page statement to the committee, explaining the problem, and nothing but the briefest reference to a federal grand jury investigation that had been under way for months as a result of Conrail's refusal to provide the ICC with documents pertaining to the payroll problem.

"In fact, up to this point Conrail officials were making outright denials to my staff that they

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were even aware of any investigation or any payroll problems in the Conrail system. We need an explanation of why, according to Conrail's own statements, you deny the continuing existence of a payroll problem."

Sweeney replied, "I was not informed until the day before that there was a so-called Conrail payroll problem. First of all, it is not a payroll problem. It is a problem of undistributed W-2 forms. The railroads that preceded Conrail had a system under which the W-2 forms were handed out with the paycheck in January of each year. And so years and years could go by without ever knowing the correct address for the employee who was receiving the check.... When the finance department decided last summer to revise the system, there was no way except by this process to update the addresses. That's why we had 15,000 undelivered W-2 forms. We have yet to find the first instance of fraud."

This appeared to be a complete refutation of the allegations. If McGovern wanted information, he'd have to dig. He had to demand a full accounting of how the 15,000 W-2 forms were delivered: were they simply distributed by the gang bosses and yard superintendents or were correct addresses found for real workers? Sweeney hadn't said. Why had it taken nine months to deliver 14,000 forms? What about Sweeney's statement that Conrail had uncovered no ghosts? How did they search? How long? *Who* did the looking?

I began to write these questions down for McGovern, but my boss gently tapped my wrist and shook his head. He leaned over and whispered in my ear, "Let him do it his way."

I was instantly drained of all energy. There was nothing for me to do. I sat back in my chair and watched.

Perhaps McGovern was tired that day. He let Sweeney off the hook. Instead of grilling Jordan's gopher, he merely asked, "If we were to grant that there is no hanky-panky in the way money is being distributed in Conrail and other parts of the rail industry—why wasn't the Congress informed of this earlier?"

He had unilaterally taken us out of the ball game. Now all Sweeney had to do was defend slow reporting. Suddenly the focus was off payroll fraud, off labor-management complicity, and onto why busy men trying to resuscitate a railroad hadn't told Congress about a few missing tax forms.

At noon the hearing ended with a whimper. McGovern caught a cab to LaGuardia, and the three of us went for a drink.

I complained to my boss that we had failed. He looked tolerantly at me. "Why—because McGovern didn't do things the way you wanted him to?"

"Yes, I thought he'd be more like the McGovern of 1972, a fighter for his position."

"Listen. He's the boss. He did it the way he wanted to. Maybe he doesn't want to fight Conrail. What can I say? McGovern liked the hearing. He understands railroads a little better now. Why don't you take some pleasure in having educated a United States senator?" □

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September 1981

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The New York Times

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The Case for Selling Justice

Let's make it official

by Jonathan Alter

In 1622, a Spanish sailing vessel bound from Havana to Cadiz sank off the coast of Florida, its gold and silver left as sunken treasure. Three hundred and fifty-nine years later, a group of professional "treasure salvors" appeared in federal court in an effort to prevent rival fortune-seekers from diving after the wreck. The Fifth Circuit Court of Appeals, examining the issue for the third time (that doesn't include litigation in lower courts), granted the divers an injunction against their competitors.

This was but one of more than a hundred 1981 U.S. District and Circuit Court of Appeals cases I sampled recently in an informal effort to find out what kinds of parties are trying to salvage treasure—or justice—in federal court nowadays. I read up on *Select Pork* v. *Babcock Swine,* in which Babcock was alleged to have substituted inferior pigs for the premium breed promised; and *Super Star Sneaker* v. *Bata Shoe Co.,* a case involving charges by Super Star that its supplier had been selling to a competitor at lower prices. I familiarized myself with a nine-year-old battle in the world of vacuum cleaners over a distributor-

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ship, and followed with interest another donnybrook between IBM and Transamerica Computer.

Not all of the reported decisions I read involved private companies skirmishing with one another. But whatever the issue, one thing was clear: only a handful of these cases could possibly affect any people other than the parties involved. And of that handful only one or two could be considered of general social significance.

So the heretical question that stuck in my mind was this: Since more than 90 percent of us never use the courts in our entire lives, why are we paying for the treasure hunters and prosperous computer companies to solve their private disputes? The parties pay attorney's fees and "court costs" (a $60 filing fee in federal district court plus transcripts, depositions, and a few other sundries) but never the government's *actual* out-of-pocket costs—the salaries of judges, clerks, and other court employees, and the expenses incurred by building and maintaining courthouses. In other words, the clients pay for the lawyers and the Xerox machines but leave the cost of putting on the show to the public.

With the exception of a relatively small num-

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ber of appeals by prisoners pursuing their own cases, and pro bono cases (where the lawyers donate their services free of charge), the trials I read about involved private parties who were either wealthy already—a prerequisite for paying many of today's attorney's fees—or betting their shirts the courts would make them so. The forum for their gamble, or, in the case of contingency fees, their lawyers' gamble, was being subsidized by taxpayers less able to pay than the court users and a lot less concerned with the result.

Government statistics reinforced my impression of what *kind* of parties are bringing the federal suits that plague us. Many critics assume the courts are being tied in knots by civil-rights issues. But while civil-rights cases have increased somewhat from 4.6 percent of all U.S. District suits in 1970 to 7.7 percent in 1980, the real growth has been in cases like *Select Pork* v. *Babcock Swine*. Contractual disputes are up to 29.1 percent of all federal cases, an almost ten-percent increase since 1970.

Contract cases are not only tried more frequently than any other type. According to new federal court figures, they also account for a large share of the longest, most expensive federal trials. Along with long-running securities cases, the results of which also tend to be of concern only to well-off private parties, they made up nearly one-third of the U.S. District Court cases lasting 20 days or longer in 1980.

So when you stop to think about it, courts don't really resemble the public services with which they're often compared. Those services—like parks or police—are used by all segments of society, and so deserve to be tax supported. Courts are different. They're more like waterways or airports—financed by the many but used (however frequently) by the few. If barge owners and private pilots should pay for river locks and runway maintenance —a "user's fee" concept beginning to win wide acceptance—why shouldn't civil litigants pay for courts?

Courting Contentiousness

I can see you rolling your eyeballs now. What about our nation's legal heritage? What about equal access for all? The courts, you protest, are for everyone. Hadn't Learned Hand said so? "If we are to keep our democracy, there must be one commandment," the good judge intoned from somewhere up near Mt. Sinai Hospital, "Thou shalt not ration justice."

With 90 percent of the lawyers still serving ten percent of the people in exchange for hourly fees that can exceed what many Americans make in a week, there's a strong case to be made that justice is fairly well rationed already. Hand's point, though, is that we shouldn't ration it further, and in that sense he's right. Society should always provide free access to courts for those whose basic rights have been abused, or whose appeal to justice would be denied by poverty. Determining which parties fit into those categories is a matter in which courts are already very experienced.

If barge owners and private pilots should pay for river locks and runway maintenance, why shouldn't civil litigants pay a "user's fee" for courts?

But I'm not talking about those cases. I'm talking about disputes involving private parties who can afford to pay. The traditional reason governments have subsidized the resolution of such civil disputes is to keep the peace—if people can take their arguments to court they are less likely to pull out dueling pistols or resort to other forms of persuasion. But chaos is no longer the only alternative to the courts. There are now other ways of resolving disputes between private parties.

Take auto accidents, to use the most common example. Say your car and mine collide, and your leg is broken. If you take me to court, your lawyer will fight to establish that it was my fault. If he succeeds, I or my insurance company pays. Since the collision was, after all, an *accident*, it is usually difficult and time-consuming to prove that one side or the other was solely at fault. This costs the taxpayers lots of money in court maintenance—money that could be saved by no-fault insurance, which several states have already adopted over the objections of trial lawyers.

But these aren't the only cases that shouldn't go to litigation. We have to get it out of our heads that the courtroom is the best place to resolve almost *any* civil dispute. Sometimes it's the worst place. Think about divorce, where Iago-like attorneys whisper in each spouse's ear, advising them not to talk to one another, to push for what they can get, what's "theirs." Today's Othellos and Desdemonas must *both* suffer this fate. Wouldn't it be better to have a mediator sit down with the couple, reasoning with them that the children will be happier and the ordeal will pass more easily if they part ways amicably and a little

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less selfishly? Shouldn't we structure our system to encourage this?

Such logic applies well to all kinds of other cases, especially contracts. Remember, when you opt for litigation you are not supposed to talk to the other party. You and your lawyer spend months or years trying to prove how wrong the other side is. Hard feelings, even hatreds, develop. Again, wouldn't it be better to hire one mediator instead of two (or more) lawyers, avoid use of the courts, and seek a solution that leaves both parties cool-headed and ready to do business again?

This needn't be a pipe dream, as parties who've tried it will attest. When the enormous Eisenhower Tunnel was cut through a Colorado mountain pass in the late 1960s, contractors and state highway officials battled out all of their disputes in court, causing delays and millions of dollars in overruns. Now they're at work on a second huge tunnel, this time with the help of a special "mediation-arbitration" arrangement that is beginning to win popularity in the construction industry, among other places. This year, regular arbitration—while lacking mediation's appeal to common interests—will account for the settlement of about 40,000 private disputes.

Many—though not all—cases involving the government can also be resolved without rushing to court. Two types of issues that have generated considerable litigation in recent years are regulation and student loans. Obviously, sensible deregulation could reduce the first; making student loans collectible through the tax system (rather than going to court for default proceedings) would eliminate the second. Other government programs should be similarly examined for ways to limit litigation.

We're confronting two problems here. One is the financial cost—why should the public pay to have the courts handle controversies that could be dealt with in other ways? The second is the social cost—does it make sense to encourage people to be hostile and fight it out in court? Such encouragement, of course, is precisely what we provide when we make available the judge and the courtroom virtually free of charge.

And an increasing number of potential litigants—in fact, an explosive number—are responding to that free offer. In 1980, *five million lawsuits* were filed in state courts. While the U.S. population grew by only nine percent during the 1970s, the number of cases filed in federal court nearly *doubled.* The country now contains a total of 17,000 federal, state, and local courthouses. It has produced two-thirds of all the world's lawyers—22 times as many per capita as Japan and three times as many per capita as the fount of our legal system, England. I could go on. By any measure, the "litigious society" and the myriad headaches that phrase implies have become all too real. Even though most Americans still aren't litigious, lawsuit fever is spreading—and infecting us all.

Mudge and Rose, Social Activists

So here's where the court user's fee idea comes in again. In addition to helping offset the government's out-of-pocket expenses, it might help discourage excessive litigation. But because clients are willing to pay practically anything nowadays to go to court (witness stratospheric attorney's fees), the stakes have to be made especially high. The best way to assure this is to assign the full weight of court user's fees to one party—the loser. This is similar to the British rule, under which the losing party in a civil case pays the opponent's attorney's fees. (In a few cases, American judges do this now.) But why have the loser reimburse only the opponent's expenses and not the taxpayer's? If we want to make sure that litigation is discouraged, we could develop a system giving judges the option of assessing actual court costs *and* attorney's fees to the loser.

A loser-pays provision might also discourage costly delays by guilty defendants. Why file all sorts of dilatory motions when you know that if the plaintiff prevails, you'll have to pay not only for the running meters of the lawyers on both sides, but perhaps for the *judge's* time, too?

Imagine it: Cravath, Swaine and Moore representing the little guy but being paid by the big guy! Arnold and Porter weighing in on the side of truth and justice!

Another advantage of a loser-pays arrangement is that it might help deter frivolous "nuisance suits." You've read about them—the parents who sued their daughter for sending out wedding invitations without their names on them, the Washington Redskins fans who went to court to get a referee's decision overturned. Innumerable similar suits are filed each year, less patently absurd perhaps but no less frivolous. These suits thrive on low costs for plaintiffs,

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many of whom handle the cases themselves. The defendants, on the other hand, often have to spend thousands of dollars getting ridiculous charges thrown out of court. Double-or-nothing stakes would confront those inclined to litigiousness with the prospect of their innocent adversaries hiring expensive legal help and court time at their expense. The crazies would endure, but a lot of the rest would be forced to think long and hard about whether their anger or hurt feelings were really worth losing money over.

And there's one more thing this kind of loser's requirement might help accomplish—something that has to do with the kinds of lawyers this country produces. Under the current system, the best legal talent money can buy usually goes to the wealthiest clients, regardless of whose side the merits are on. The wrongful but wealthy plaintiff can be counseled in hushed, urgent tones that the tiny shred of justification his case might contain should be pursued through every possible legal maneuver and appeal until the defendant settles. The wrongful but wealthy defendant, his nervousness like putty in the attorney's hands, can be convinced that the best way to minimize his losses is to talk the case to death. Sometimes these tactics end up working, but even when they don't, the attorney's meter has been running a long time.

If lawyers want to live in the style to which they have (quickly) grown accustomed, if their law firms want to continue to buy oriental rugs and pay $40 a square foot for prime downtown office space, they must take on these clients of means. Because the lawyers are bright and hard-working, the wrong-but-rich clients get very fine legal help and often win cases they shouldn't. But even if they lose, their attorneys still get paid, and paid well. The result of all of this is that when it comes time to ration the justice, some parties consistently get bigger and better helpings than others.

A change to a loser-pays system might help begin the task of eliminating this most unfair of all American legal realities. It wouldn't mean so much in cases where the merits shade gray, but in a surprising number of disputes, right and wrong are not so very hard to figure out before the trial begins. If losers paid, our brightest lawyers could begin to take cases on the basis of whether they contained merit, assured (if they believed in their own legal abilities) that they would eventually be compensated by the other, losing side.

This way our best attorneys could also begin to serve the less affluent but innocent parties who are now worn down to settlement by well-heeled adversaries. These settlements aren't the result of the fair-minded mediation advocated above. No, they're the product of efforts by the better-off party to delay a case so long (usually in the discovery period) that the opponent—however innocent—has to settle or go broke. Under loser-pays, however, the worthy client and his top-of-the-line attorneys could march forward together to vindication, confident that because they are right, no other party can intimidate them with the prospect of losing money.

Think of the consequences. The young and idealistic could once again, yes, *serve justice.* And eat well, too. No more averting their eyes when friends (or worse, children) raise those ticklish questions about why they represent cigarette companies and polluters. No more rationalizations like "everyone deserves counsel" or "I've got to pay for day school somehow." No more of those dull pains that must still strike their brains occasionally before sleep, those flashes recalling that perhaps accommodation has its price after all.

Imagine it: Cravath, Swaine and Moore representing the little guy but being paid by the big guy. Milbank, Tweed developing a . . . *social conscience!* Arnold and Porter weighing in on the side of truth and justice! Imagine yourself walking into court arm-in-arm with a Clark Clifford or an Edward Bennett Williams. It's not so out of the question. With the right ideas, we could make treasure salvors pay for their exclusive right to dive, football fans vent their frustrations with their throats not their affidavits, and talented lawyers use their skills more often in the service of real justice. Rather than claiming that all this can't be done, let's figure out how it can. □

The Washington Monthly has unpaid internships available to qualified graduate and undergraduate students who are interested in gaining experience in the circulation, promotion, editorial research, and production phases of magazine publishing.

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Tidbits & Outrages

Honorable harbormaster, this is the freighter Tokyo Rose bound into Oakland with a cargo of "Buy American" posters

Mayor Edward Koch recently unveiled an exhibit called "Make It in New York," which describes the products manufactured in the nation's largest city. Constructed at a cost to taxpayers of $54,000, the exhibit was built by Lynch Industries of Pennsauken, New Jersey.

In appreciation of your many years of service . . .

The new Federal Employment Directory, which lists the Washington area's 200 government hiring offices, sells for $6.45. Federal employees who have been "RIFed" (laid off) get a $1 discount on the directory if they enclose a copy of their RIF notice with the order blank.

They left out "helps you lose weight"

The House recently debated a motion to kill federal tobacco subsidies. Tobacco proponents beat back the idea, 231-184. During the debate they offered several new reasons why taxpayers should maintain the subsidy. Edmund Andrews, a reporter for Westinghouse Broadcasting, picked out the highlights:

To protect health: "This is a tobacco *control* program," Rep. Neal Smith declared. Smith said that if federal acreage limits (which make tobacco profitable by monopolizing it) are lifted, "production will increase," more cigarettes will be available, and more people will get cancer. Therefore subsidies should continue. "This thought," Andrews noted, "is like saying the way to control population is to teach sex education, but teach it wrong."

To help the little guy: Several congressmen said that tobacco subsidies are a program specifically designed for small farmers. One put the total number of small tobacco farmers at 202,000; another said it was 276,000; Rep. Bob McEwen said 545,000. If McEwen is right, one U.S. citizen in 400 is a small tobacco farmer.

To help blacks: Rep. Parren Mitchell pointed out that many black farmers grow tobacco. "When you look at what we have done to blacks and minorities so far through budget cuts," he said, "I cannot bring myself" to vote against more subsidies.

To hurt the big guy: "Tobacco price supports limit the production of tobacco," added one North Carolina congressman proudly. "I'm not so sure our big tobacco companies are overly excited about the high price they have to pay."

Loose lips sink ships

The navy recently issued a directive establishing a program to prevent sexual harassment. It was addressed "To All Hands."

Good thing he got in on the pension plan

On September 30, the Senate confirmed Samuel J. Cornelius as the new deputy director of the Community Services Administration. On the following day—October 1, start of the fiscal year for Reagan's budget—the CSA was abolished.

The committee to reelect President Stassen said it would sue to overturn the judgment

The Federal Election Commission recently announced that campaign committees that have gone out of existence need not continue to report their activities. FEC stipulated, however, that defunct committees must continue to maintain all federally required records.

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EPA in Disarray

Muzzling the Watchdog

by Paul Goldberg

Over the next ten years, the average American's contact with toxic industrial chemicals is expected to *double* unless precautions are taken. That's right, twice as many cancer-causing agents in the air. Twice as many heavy metals in the water. Twice as many genetic mutagens at the bottom of the food chain that ends in your child's milk.

In the wake of Love Canal and other chemical-management nightmares, public awareness of the industrial toxin problem is high. Yet the prospect of doubled exposure over the next decade remains. Why? First, because the chemical industry—which, no one can deny, is vital to the economy—continues to expand. Second, because every year the cumulative effects of chemicals become more keenly felt as they collect and concentrate in certain areas of the environment.

Take cadmium. When it first reaches the water supply, it is usually in too small a concentration to harm anyone. Then it accumulates in certain kinds of leafy plants, where it can pose a minor health hazard. Its final stop is the livers of animals who eat the plants—maybe beef cattle. By this point the concentration is high enough to cause serious illness or death.

Paul Goldberg is a Washington writer.

This isn't an argument for turning back the clock to the fourteenth century; industrial toxins can be manufactured and used on a large scale as long as proper controls are in place. But that's where the greatest problem—and greatest danger—lies. The Reagan administration and Environmental Protection Agency administrator Anne Gorsuch are junking not only silly environmental regulations (of which there are several) but sensible and desperately needed ones as well.

At a time when 245 million pounds a day of pollutants is being disgorged into the environment, the Reagan-Gorsuch plan calls for a rapid 42 percent cut in EPA expenditures, a relaxation of air and water pollution standards, and, most important, nixing of toxic-chemical control. One of the reasons chemical problems like Love Canal got so far out of hand in the first place was the absence of any uniform national standards for handling even the deadliest substances. In recent years—as public demand for proper chemical management swelled—laws were passed to change all that. Those laws delegated the EPA to go forth and clean up the country. The main part of EPA's chemical-control project was scheduled to begin this year. Now it's being put off indefinitely. This may be a good political gamble for a 70-year-old man who won't be around to breathe

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ILLUSTRATIONS BY ROBYN JOHNSON-ROSS

the consequences, but it's a bad public safety wager for the rest of us, pitting short-term savings in industrial production costs and a minuscule federal budget reduction against the health, welfare, and gene structure of future generations.

Consider, for instance, Velsicol Chemical Company's toxic waste dump in Hollywood, Tennessee, a small town near Memphis. Over the last 30 years, it has been stacked with barrel after barrel of hexachlorofluorine, chlordan, and other toxins. In fact the site is a virtual national gallery of molecular rearrangement, boasting 60 of the 129 chemicals the EPA classifies as especially toxic. Gorsuch herself calls it one of the country's most dangerous dumps. For years the toxins have been seeping out of their barrels, through the ground and ditches into the nearby Wolf River, and eventually reaching the Mississippi. In April 1980, after extended inaction by state and local agencies, the EPA began an emergency cleanup of the area. What did the agency do? It moved 200 of the most ominous barrels to a higher elevation to prevent their being swept into the river should a flood occur. It erected a chicken wire fence to keep out children from an adjacent grade school. That was it; there wasn't enough money to do anything else.

Now that lame effort—the Carter effort—will be hampered even further. It is estimated that 80 percent of the nation's chemical wastes are being disposed of illegally—either in dumps not designed for toxics, or at night on farmers' fields, or directly into rivers—yet Gorsuch has suspended recently issued EPA regulations designed to help contractors build secure landfills and treatment facilities. Reagan and Gorsuch are drastically cutting back funds for inspectors (39 percent fewer in the next 18 months) to find leaking dumps and close them down; Gorsuch also is planning not to spend money Congress has already appropriated to clean up problem areas like Hollywood.

Perhaps Gorsuch shouldn't be blamed for shooting in the dark. After all, when she assumed her position she had had no experience with pollution-control affairs (she had been a Colorado state legislator and friend of interior secretary James Watt), no knowledge of chemistry, and for that matter no knowledge of administration (see "Manager of the Year," page 36). Her response has been the same thoughtless dogmatism that has characterized other Reagan actions—don't try to separate the good from the bad, just hack away, the same way liberals once said, don't try to separate the necessary from the superfluous, just fund everything.

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Shocking Toxic Syndrome

Perhaps it's appropriate that this should happen to EPA. Since the agency's creation in 1970, it has lived under a steady liberal-conservative cross fire. Conservatives complained that EPA was trying to ban progress and turn the U.S. into a society of transcendental meditation teachers; liberals protested that the agency had fallen into the clutches of Big Business and longed to see 50-foot irradiated cocker spaniels roaming the land.

It's estimated that 80 percent of the nation's chemical wastes are being disposed of illegally, yet Gorsuch has suspended regulations designed to help contractors build secure landfills and treatment facilities.

Make no mistake: EPA was often to blame for its own problems. It didn't treat business with much sensitivity, and the agency's regulations were at times needlessly complex. EPA regulations based on the Clean Air Act, for instance, split the country into no fewer than 239 regions with different standards and procedures.

EPA also showed a fondness for expensive high-tech gimmickry. A good example can be found in the agency's administration of the Clean Water Act, the second of its three major missions (air, water, and chemicals). EPA began by trying to regulate the estimated 50,000 industrial facilities discharging pollutants directly into rivers and streams. This effort was generally successful, although former EPA assistant administrator William Drayton believes some 10,000 sources of direct pollution remain. (Attempts to confront them will be cut back under Gorsuch's budget.)

But when industry was stopped from dumping pollutants directly into the water supply, it had to find somewhere else to turn. Some responsible companies chose to pay a little more and send their chemical wastes to one of the country's handful of secure, well-managed disposal sites and treatment facilities. (Remember, Gorsuch has placed in limbo regulations paving the way for more environmentally sound disposal facilities.) Others dumped their wastes illegally, on farmers' fields or into the same old rivers at times when no one was looking. (Pollutant discharge at 3 a.m.—when all good inspectors are home in bed—became common for some factories.) Still others turned to municipal sewer systems as disposal mechanisms. Soon 40,000 industrial facilities were discharging wastes into sewers that fed some 20,000 municipal treatment plants—which in turn eventually dumped their by-products into a river or stream.

EPA faced two basic choices. It could prevent industry from pumping any dangerous and tricky chemicals into the sewers, specifying instead that such wastes be "pretreated" at their point of creation. Or it could attempt to fund the construction of waste-water treatment plants so sophisticated they could handle anything. It chose the latter course.

That decision is now widely viewed as a disastrous one. First, it posed a technological problem almost beyond solution. When chemicals are at their point of creation, they are usually in fairly concentrated forms; equally important, their nature is known to the manufacturer. Once a few gallons of toxin have been mixed with a few hundred million gallons of municipal water, the concentration falls so low that it is difficult to detect, let alone deal with; no machine, no matter how capable, can do it on a reliable basis. Other substances, especially heavy metals like cadmium, prance right through every kind of treatment equipment. So this decision meant, in effect, that instead of industry, EPA and local public works departments would become the villains; chemicals would reach the river as a result of being discharged from treatment plants.

Many institutional forces favored this arrangement. Industry liked it because it transferred the problem to publicly owned and financed treatment plants (many of them built at federal expense). EPA seemed to like it because it gave the agency a huge empire of expensive, complicated projects to finance and supervise. In January 1981, after years of dawdling, EPA finally came to its senses and proposed a new arrangement under which industry would be required to treat its hazardous wastes on-site, keeping them out of sewers. Naturally industry howled at the thought of assuming an expense that had, until then, been shouldered primarily by taxpayers. But the system, by using a cheaper and more reliable means of chemical management, promised to lower pollution-control costs to society as a whole. (It also affected only 10,000 of the 40,000 factories, since research had shown that most did not discharge anything worth worrying about.)

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Just after the pretreatment regulation was published, Gorsuch suspended it. In the name of the free market, a publicly subsidized (and generally ineffective) means of industrial waste treatment continues.

Despite EPA's shortcomings in the administration of these two programs, there can be no doubt that their basic goals—cleaner air and water—have been achieved to a surprising extent. The District of Columbia's air now contains only half as much sulphur as it did in 1960, and one-third the amount of "particulates" (soot and dirt). Emission of cancer-causing chemicals from U.S. Steel's Clairton Coke Works near Pittsburgh has fallen 90 percent in the last five years. Salmon are returning to the Connecticut River. And it's not just a question of less smoke coming from northeastern factories operating at lower capacity. In Los Angeles, a boom area, air pollution (based on parts per million of ozone) is down 20 percent from 1971. Given this reasonable record of success, it seemed that EPA would have a good chance on its next mission, control of toxic chemicals. That is, until Gorsuch decided that dioxins are a girl's best friend.

Touchy-Feely Enforcement

"I think it's personally sad that we as an American people have come to a mindset that X more people or X more dollars should be directed as a solution to the problem," Gorsuch said, announcing that she foresaw "unlimited" cost savings in pollution control. X, in scientific literature, often represents the unknown; sometimes it represents nothing. A lot of X seems to be Gorsuch's solution to toxic chemical problems.

She plans to cut the EPA's present $1.4 billion budget to $975 million in fiscal 1983 (fiscal 1982 has started already) and, according to Drayton, to around $700 million in fiscal 1984. This means a cut from 11,000 to 6,000 employees. That in itself might be acceptable—EPA is, like all federal agencies, to some extent overstaffed—but instead of carefully selecting the deadwood and redundant positions, Gorsuch is making blanket kills. Twenty-five percent of EPA's water-quality enforcement agents are to go; 36 percent of its air-quality enforcers. These field-level personnel who actually monitor compliance are arguably the EPA's most important workers right now.

Also under threat of dismissal are EPA's 90 enforcement lawyers. Gorsuch cadres Peter Broccoletti (in his previous life a Nixon CREEP aide) and Robert Crouch (recently an office-space planner) have been interviewing the enforcement lawyers, asking them questions like "list your outside affiliations." EPA sources believe only 20 of the 90 lawyers will be retained; the others will be replaced by a much smaller contingent from industry or trade-association backgrounds. Apparently fewer lawyers will be needed because there will be less to do. In recent years EPA has forwarded 200 suits to the Justice Department for prosecution of polluting companies. Since Gorsuch took office, only 12 suits have been sent.

Byron Nelson, Gorsuch's spokesman, explains EPA's new strategy for cracking down on polluters: "The last administration sued. This administration will come to you and say, 'Let's sit down and talk about it.'" You might call this the transactional-analysis approach to law enforcement. Let's hope both polluter and regulator get in touch with their feelings before they sit down and talk, presumably during a tax-deductible business lunch.

In some cases, Gorsuch is attempting to put regulations to sleep simply by not enforcing them. A recently enacted hazardous-wastes control "manifest" system—which specifies that all dangerous substances be accompanied by a ticket explaining what they are and where they've

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been—still exists, but informed sources say that Gorsuch has ordered that no attempt be made to enforce it. In other cases Gorsuch has opted for the federalist solution of returning responsibility to the states.

Like much of the Reagan administration rhetoric on the states, this sounds fine until you think it through. EPA was created eleven years ago—with broad bipartisan support—precisely because most states had abdicated their responsibility for environmental control. No prize is offered for guessing the states' response to this latest development. Since Gorsuch took over, Idaho's legislature has thrown responsibility for air pollution control back to Washington; Iowa has washed its hands (probably with bottled water) of the drinking water program; Wyoming asked to be counted out of hazardous-waste control. In fact, most of the EPA's enabling statutes give states the authority to pass the buck right back to Washington, something Gorsuch doesn't seem to understand.

Perhaps worse, Gorsuch plans to stop spending money on the most pressing environmental menace of them all—cleanup of abandoned toxic waste dumps like Love Canal, Hollywood, and others. The "Superfund" created at the end of Carter's administration (with generally bipartisan backing and, at the end, a fair degree of support from the chemical industry) will tax chemical manufacturers to the tune of $1.6 billion for toxic cleanups. Next year, $396 million of that sum will be available. Gorsuch plans to spend only $172 million, despite the fact that she recently said there are 114 chemical waste dumps nationwide that pose an immediate and serious threat to public health.

Where will the money not spent on Superfund cleanups go? Back to the Treasury, of course, where it will serve to cut the deficit and hold down public borrowing. This may not make the country any safer for your children, but it will certainly win Gorsuch brownie points in the White House and with David Stockman.

And with the chemical industry. If the unspent Superfund pool should exceed $500 million, the tax on manufacturers will be suspended. This was meant to happen *after* the problem was solved, not before. But then what's a few leaking barrels among friends?

Stall's Well

Gorsuch may not have known anything about environmental matters when she took the EPA job, but she's picked up some things very quickly—chief among them the most popular arguments used by lawyers intent on frustrating pollution safeguards.

As pollution control regulations were issued through the 1970s, industry countered with a steady wave of lawsuits designed to delay the regulations' implementation. In most cases, a company's legal fees to stall were lower than the cost to correct the problem—so perpetual delay was, as supply-siders like to say, "cost effective." A favorite perpetual-delay argument of corporate lawyers involves "scientific certainty." It goes like this: Unless science can say with absolute certainty that one level of pollution is distinctly worse than another, standards can't be valid. If, for instance, a factory's sulphur-discharge limit is set at 100 tons per day, the company sues demanding incontrovertible proof that 101 tons of sulphur per day will cause health hazards but 99 tons will not.

Naturally, such proof is impossible to obtain. No scientist can isolate the effects of any given pollutant from the hundreds or even thousands of manmade compounds any given citizen is exposed to. No scientist can with absolute assurance predict the role of random factors like weather in the distribution of pollutants. And even if general agreement is obtained among scientists, someone can always be found who'll contest it in court; the tobacco industry, for instance, continues to trot out high-class hookers with medical degrees who swear under oath that there's nothing to this business about cigarette smokers getting lung cancer.

Gorsuch plans to nearly stop spending money on the most pressing environmental menace of them all—cleanup of abandoned toxic waste dumps like Love Canal.

Because it is impossible to establish *with certainty* the ideal level of pollution control, EPA should have conceded early on that standards would contain an arbitrary element. After all, most social judgments are arbitrary to some extent—why is it legal to drive 54 mph but not 56? Is 56 drastically faster than 54? Why can businessmen deduct travel expenses on their way to the company's hunting lodge for a "working weekend" but not on their way to the office to improve production? Unfortunately, early in the

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1970s, EPA sent its people back to the laboratory in a futile attempt to develop standards that would be truly certain. This led to a problem known around the agency as "paralysis by analysis"—so much complex and slightly differing information that policy makers couldn't make up their minds what to do, and instead did nothing. Many vital chemical control regulations ordered under the Resource Conservation and Recovery Act, which was signed into law by *President Ford,* still had not been put in final form when President Reagan took office.

Gorsuch recently jumped on the "scientific certainty" bandwagon when, after announcing planned relaxations in air pollution rules, she explained that such standards should be based on "sound scientific data demonstrating where air quality represents real health risks." "Environmentalists predicted a battle over the definition of 'real health risks,'" *The Washington Post* noted in a classic understatement. Meanwhile, as lawyers and scientists trot back over to the courthouse for a few decades' worth of arguments about what level of toxicity is *certain* to harm the population, Gorsuch apparently plans to do little about what is 99.9 percent likely to do the trick—waste chlorinated pesticides, spent electroplating acid, PBB, DHC, or others on the hit parade.

The scientific certainty argument, and its use in stopping chemical control regulations, has especially chilling applications for the long-range specter of cancer. Uncovering the ultimate "cause" of cancer has been, for medicine, a continuing vexation. Most substances that are known to cause cancer in lab animals when administered in tremendous doses (benzene, for example) are rarely present in such magnitude in the real world. Trace amounts of carcinogens are, however, all around us, and ever-increasing in number. No scientist can say with certainty whether they all combine to trip the body's cancer-causing mechanism. It *is* known that a greater incidence of cancer in the U.S. roughly parallels the last 50 years' dramatic increase in industrialization and chemical production—and the increasing presence of synthetic chemicals in the environment.

That is not, by any means, an argument against making chemicals. Modern society depends on an abundance of chemicals; without them our high standard of living would not be possible. It is, however, an argument for sparing no reasonable expense to keep waste chemicals out of the environment, where they may accumulate until in the most ghastly fashion possible they answer the question of whether they are the ultimate cause of cancer. "Right now, health care accounts for more than ten percent of the country's GNP," Drayton notes, or $300 billion a year. "Yet Reagan wants to save a few hundred million dollars while as much as doubling our exposure to what may, in the end, prove to be the greatest health risk of all."

Forward into the Past

None of this seems to move the current EPA management. Gorsuch promised "unlimited" savings and has, among other things, shown sympathy for the idea that auto-emission control standards—perhaps the single best advance in pollution control, something *already achieved*—be cut in half. Gorsuch estimates this will save $100 per car—surely unlimited enough to justify third-stage smog alerts.

But mismanagement of toxic chemicals remains the most immediate problem facing public health, and it remains what the administration seems determined to do least about. The task is easy to postpone because toxins are invisible. Once set loose in the environment, chemicals don't collect on auto paint or wash up on beaches where they can be seen. They don't foam like dirty rivers, or block the scenic view like dirty air. They hang in the air or fan out in water in traces no sense can detect. Sometimes even instruments have difficulty detecting their presence. They accumulate silently, invisibly, in a receptacle ideally designed to absorb them—the human body.

To the extent Reagan's budget-cutting movement can be seen as the search for problems to postpone, chemical control may seem like the perfect issue. Politically, it is not. While Washington may not appreciate the severity of chemical waste problems, voters—many of whom live near one of the country's 20,000 toxic dumps—appreciate it all too well. Public demand for resolution of the chemical issue is high. Pollster Louis Harris recently told a congressional committee that his findings indicated very solid opposition to repeal or watering down of environmental protection. "That is the message that comes out of this [poll] as clearly as anything I have ever seen in my professional career," he said.

Reagan himself has been silent on Gorsuch's little EPA renovation project, in part because he is reported to have seen a private White House poll that shows the public wholly opposed to what she is doing. The president, you may recall, is fond of complaining that Washington bureaucrats are far out of touch with the concerns of the people. Apparently he should know. □

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EPA in Disarray

MANAGER OF THE YEAR

by Frank O'Donnell

At her first news conference last August, Anne Gorsuch, former Mountain Bell attorney and now EPA administrator, announced her support for doubling the allowable pollution from automobiles. The change would be painless, she said, because the rules applied only to future models. When reporters protested that these standards already applied to cars in production, Gorsuch shifted gears. She said that 1981 models were supposed to meet the regulations but couldn't. "My understanding is that they're all getting waivers," a Gorsuch aide quickly added. When reporters protested again that 1981 cars do in fact meet the standards, Gorsuch promptly changed topics.

Veteran reporters weren't surprised that Gorsuch seemed to have literally no idea what she was talking about. After all, not a single experienced EPA official accompanied her to the press conference. She sat instead with John Daniel, a former chemical industry lawyer; Kitty Adams, a former Business Roundtable consultant; and Kathleen Bennett, a former paper industry lobbyist.

Gorsuch had given early warning that she would actively shun her own agency. Following her February nomination she refused to visit EPA's building, and also refused to meet its career employees, except for one tense picture-taking session. She chose to ensconce herself in room 6124 of the Interior Department building—nearly two miles from EPA headquarters but just a few doors down from her mentor, James Watt.

Though she's since moved into the EPA building, little else has changed. Gorsuch has vowed to make all her decisions alone, or in concert with industry lobbyists; she has pressured career agency managers to quit, and many have done so. Throwing out the old team is, of course, her prerogative. But she shows no interest in replacing the old team with a new one. Most of the agency's secondary management posts remain unfilled a full year after Reagan's election.

It was through Interior that Gorsuch formed her "inner circle." She acquired two confidants—Daniel, recommended by Watt aide Stanley Hulett, and James Sanderson, a Denver attorney who had worked for Watt's Mountain States Legal Foundation. Quickly becoming Gorsuch's Haldeman and Ehrlichman, they cautioned her not to trust the bureaucrats whom Reagan had lambasted during the campaign. Gorsuch, whose managerial experience peaked when she supervised six secretaries, two investigators, and one paralegal as Denver's deputy district attorney in 1971, went along.

By the time she moved to EPA headquarters in May, Gorsuch was ready to unveil her master plan for the agency. While the press has noted

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that her reorganization abolished EPA's enforcement division, significantly weakening the agency's ability to pursue recalcitrant polluters, there was another, equally significant though little-noticed change.

The agency's key managers under former EPA administrations had been two dozen or so deputy assistant administrators. These were the people who actually got things done and also bridged whatever gaps occurred between lower-level bureaucrats and their political chieftains.

Gorsuch abolished all the deputy assistant administrator jobs in one fell swoop, replacing them with two "associate" administrators who report to her staff—which is located on EPA's now-fabled "12th floor," accessible only by a guarded elevator. Taking these two new jobs were Nolan Clark and Frank Shepherd, selected by the White House for their impeccable Republican credentials (Shepherd had directed the Reagan election campaign in Coral Gables, Florida; Clark had friends on Reagan's staff). EPA staffers learned, much to their relief, that both Clark and Shepherd were willing to listen to the agency's side of environmental arguments. But this quickly brought Clark and Shepherd into conflict with Daniel and Sanderson, who continued to advise Gorsuch on a part-time basis. Within three months Clark was fired and Shepherd quit in disgust.

Many agency officials believe that Shepherd and Clark were victimized by the backbiting and paranoia that characterize Gorsuch's immediate staff. Shepherd, for instance, had worked with Carter holdovers Michele Corash and James Smith to draft changes in a major consent decree on water pollution. Shepherd filed the changes with a federal court July 31, believing from prior meetings with Gorsuch that he had her blessing. But when Daniel informed Gorsuch about Shepherd's action, she exploded. She ordered that only the most routine court matters could be filed without her staff's clearance.

In June a congressional subcommittee chaired by Representative Henry Waxman of California asked Clark's division to provide information about the Clean Air Act's impact on energy development. EPA career analysts compiled extensive evidence indicating that—contrary to prevailing industry rhetoric—the law's effect was insignificant. Gorsuch's staff ordered the report rewritten to allege that "many large and important" energy projects had been "significantly" delayed or aborted by the law. (No specific project names were offered.)

Waxman's subcommittee, tipped off about the distortion, wrote Gorsuch a letter demanding the original draft report. Attempting to compromise, Clark approved a conciliatory letter to Waxman. The letter went to Gorsuch's staff for clearance, and several days later Gorsuch aide Kitty Adams phoned one of Clark's subordinates. "You people must have your heads screwed on backwards," Adams thundered over the phone. "We can't be conciliatory with these people."

Gorsuch has loudly and repeatedly faulted her "paper-shuffling" predecessors, accusing them of condoning a vast "backlog" of unmade agency decisions. She has a valid argument there. The trouble is she's made the backlog even worse by demanding that her office control all decisions.

A case in point involves state actions to revise their air quality improvement plans. EPA must by law approve state revisions before they can

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take effect. Hundreds of revisions are processed every year. In past administrations, state actions were reviewed by officials in EPA's ten regional offices. Subsequent approval by EPA headquarters was almost always pro forma. Redundant as this procedure may have seemed, Gorsuch has complicated it further. Apparently fearful that career staffers would try to slip one over on her, Gorsuch mandated that Bennett personally read each state plan—even after it has been cleared by everyone else.

It gets worse. After Bennett approves state actions—which sometimes doesn't happen until weeks later, when she convenes a meeting with lower-level staffers—they go to Gorsuch's staff. Four separate copies must go to the 12th floor, including one to press officer Byron Nelson, who reportedly just stacks them up on the floor. (This account is actually a simplified description of the process, which is so baroque there is a five-page EPA memo describing it.)

Turnaround time on such actions is slow, but even slower if a policy question is involved. Maryland Governor Harry Hughes fumed for weeks waiting for a response after asking whether his state should go ahead and appropriate money for an auto-inspection program despite Gorsuch's opposition to mandatory inspections. He finally received a reply that simply said "Thank you for your interest."

The situation is similar for EPA programs dealing with oil and chemical spills and municipal waste-water treatment. EPA's spill-control program has long been considered one of the agency's most efficient operations; spill controllers are dispatched by regional offices near the scene of an emergency. But under Gorsuch's system such decisions are made by staff aides in the Washington office—aides hundreds or thousands of miles from the problem.

This may seem odd in an administration committed to deemphasizing Washington's role, but Gorsuch has used the same approach in other areas. In the past, for instance, sewage-treatment grants have been issued by EPA regional offices. Gorsuch put a stop to that. She directed that paperwork for all but the smallest grants be approved by her office.

Paperwork generated by the air and water pollution control offices may pale in comparison to that expected under a new procedure preventing agency scientists from making unapproved remarks about environmental problems. The procedure, called a "peer review," requires that every oral presentation by an EPA scientist, scientific consultant, or research contractor be reviewed at four levels of the EPA bureaucracy for "inappropriate policy statements or conclusions." The system also specifies that everything from slide presentations to computer software be approved by at least seven officials before it is displayed to the public. Technical manuals, *Science* magazine noted, might have to endure as many as 30 review steps.

Though Gorsuch stresses that she wants "good science" from EPA, this plan actually may produce only mumbo-jumbo—since every scientific decision will be subjected to scrutiny by a Gorsuch team that has already demonstrated its disinterest in factual reality.

Meanwhile EPA initiatives seeking to speed up energy-permit processing, coordinate rules for toxic pollutants, and promote economic incentives for pollution control are being pared or abandoned. To give her career staff at least the appearance of something to do, Gorsuch has been assigning busy work like a junior-high homeroom teacher. During recent debate on Clean Air Act revisions, for example, dozens of EPA staffers spent weeks assembling information requested by unidentified Gorsuch aides on the 12th floor. The staffers never knew what was done with their work after it was sent up the guarded elevator. Finally, they learned that legislation Gorsuch planned to send to the Hill was actually being drafted by outside attorneys who represented oil and other lobbies.

Gorsuch repeatedly proclaims that she believes in "New Federalism"—in this case, turning pollution-control programs over to the states. She forgets that many states don't *want* responsibility for environmental decisions, which, no matter how wisely made, always offend someone.

Colorado has been one such state. When Gorsuch was a Colorado state legislator, she voted against a state-run program to manage hazardous chemical wastes. Leave it up to the Feds, she said. If she'd known the kind of condition she herself would put the Feds in, she might have voted differently. □

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A *TWM* Profile

What kind of person gives *The Washington Monthly?*

NAME: Santa Claus

CAREER: World-wide distributor of Rodin bookends, pictures of dogs flushing quail, Adolfo sweat socks, etc.

HOBBIES: Globe-trotting to find who's naughty and nice; challenging himself with the *Monthly*'s political puzzle.

LAST BOOK READ: *How Washington Really Works* by Charles Peters.

LATEST ACCOMPLISHMENT: World's leading expert on gift preferences for informed, intelligent readers.

PERSONAL STATEMENT: "Flying to Washington once a year doesn't keep me informed. *The Washington Monthly* tells me how Washington *really* works (where they still believe in Santa).

"And the *Monthly* makes my belly shake like a bowl full of jelly. I even take it with me when I fly. It's great over ice, over water.

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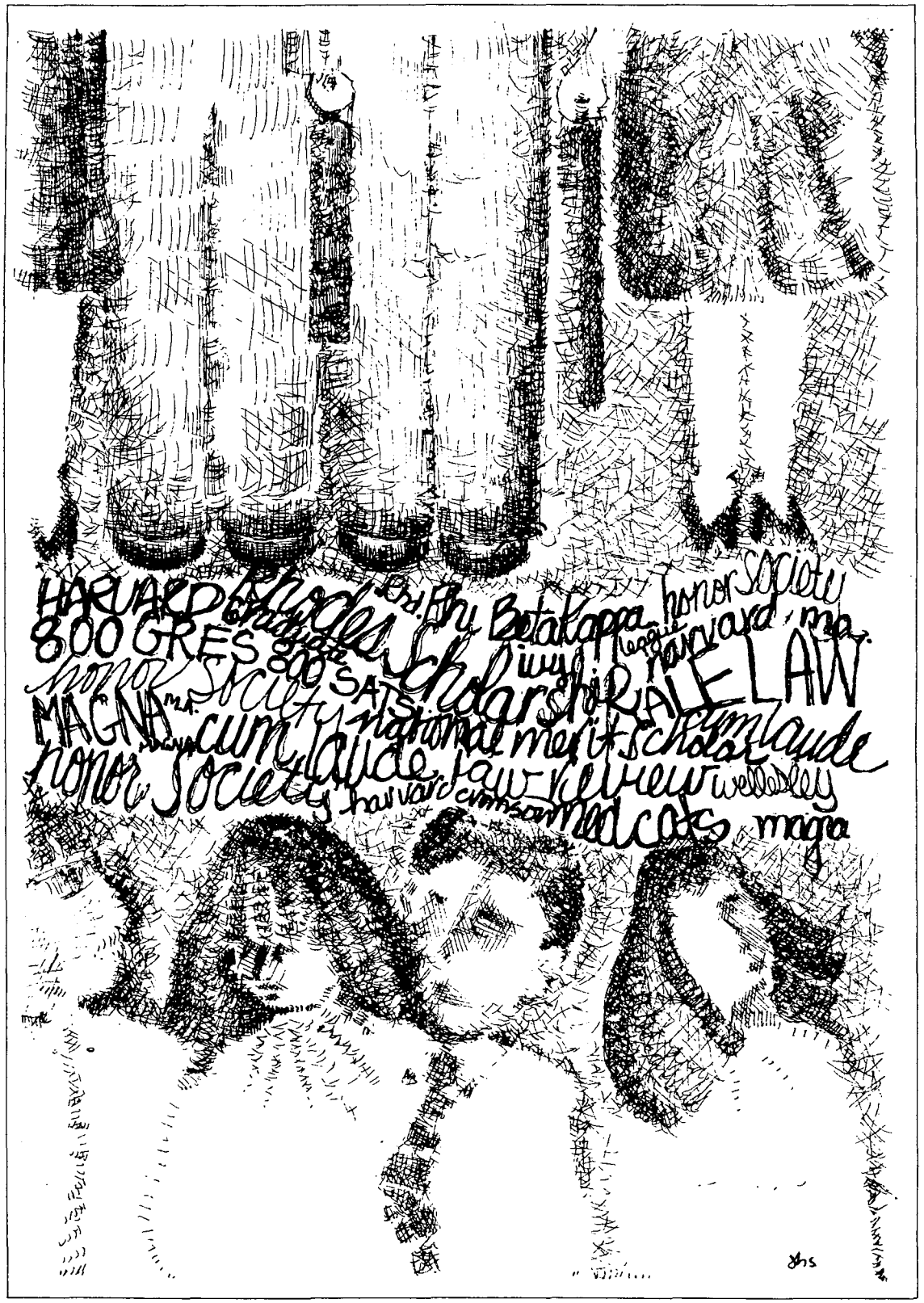

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THE MERIT RACKET

How SATs are ruining the GNP

by Nicholas Lemann

Henry Adams could see easy ways of making a hundred blunders," wrote Henry Adams in *The Education of Henry Adams*. "He could see no likely way of making a legitimate success." Poor Adams. It was his curse to be the first truly modern man of the American East Coast, in that he spent his entire life worrying miserably about how his career was going. The sentence quoted above describes him at age 28: still trying to decide what to do and obsessively comparing himself to his friends in every particular of advancement. At 54, without question an accomplished man on the way to greatness, he had made exactly no progress on this score: "Thus, in 1892, neither Hay, King, nor Adams knew whether they had attained success, or how to estimate it, or what to call it; and the American people seemed to have no clearer idea than they."

In retrospect it seems that the American people knew perfectly well how to estimate success, namely financially. But Adams, being rich and upper-class, was in a position to deny even that. "Few Americans envied the very rich for anything . . . most of them got out of their money," he wrote. "New York might occasionally fear them, but more often laughed or sneered at them, and never showed them respect. Scarcely one of the very rich men held any position in society by virtue of his wealth, or could have been elected to an office, or even into a good club."

In a way these sentiments are very modern—who hasn't heard impeccably educated young people today whining about there being nothing for them to do?—but at their core they are completely out of date. Adams was writing about an age of unfettered industrial capitalism that was completely repellent to him, not least because it valued a man of his talents and training very little. It seemed to him that the country was in a state of chaos, that virtue was not rewarded, that there was no widely held notion of how to measure people's worth and accomplishments except by the size of their bank accounts, which was merely the product of luck and vulgarity. And specifically there was not much for him to do. Though it was only a hundred years ago, this was a time when there were no great Wall Street law firms, no huge, politically active universities, no federal regulatory agencies, no professionalized

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civil service to speak of; when the professions of law, medicine, and teaching were half-populated by charlatans thence held in low esteem by the public; when, as Adams often mournfully pointed out, his adopted hometown of Washington was considered the sticks; when, in other words, all of the many prestigious and well-paying careers now available to those with roughly Adams's education and inclinations didn't exist.

What has happened between then and now is that the notion of merit—something separate from money, and designed to answer almost exactly all of Henry Adams's longings—has come into being. It has become so powerful a notion that the United States is now routinely described as a meritocracy, which means a society run by the talented (and therefore the virtuous). An elaborate bureaucratic system has come into being to discover the meritorious and groom them for leadership. The meritocracy has developed to the point where nobody can possibly complain that Americans have no way but money of measuring success. They can now measure it by test scores and academic degrees and job titles. And by looking at these measurements—that is, by looking at someone's resume—it's possible to tell precisely how successful he is. Merit is one of the most powerful ideas in American life in this century. And, as it's currently defined, it's a wrongheaded, outmoded idea, too—a bad idea.

The Pro Bowl

The meritocracy came into being roughly this way: First, men of Adams's generation voiced their closely intertwined dissatisfactions with the state of the country and the state of their own lives. "The America they knew," Richard Hofstadter wrote, "did not lack opportunities, but it did seem to lack opportunities of the highest sort for men of the highest standards." This generation's children and proteges became Progressives, and in a couple of decades, acting again out of a subtle combination of sincere political belief and a keen sense of what would be best for them, invented a series of institutions that would henceforth be their berths in American society.

In 1900 the American Medical Association had 8,400 members, and the medical profession was low-paying and full of quacks. In 1910 the AMA had 70,000 members, and a series of sweeping reforms of medical education led to dramatic improvements in the quality of medical care, dramatic reductions in the number of doctors, and dramatic increases in doctors' incomes. The American Bar Association was founded in 1878 and in 1880 had only 16 state and local affiliates. Lawyers were widely despised. By 1916 the ABA had 48 state and 623 local affiliates, admission to the bar was much tougher to obtain, and lawyers were far better off. In the public schools, state compulsory attendance laws were passed in the late 1900s, and between 1890 and 1910 the number of teachers increased by 400 percent. States began to require professionalized teacher training. In 1910 the National Education Association elected its first schoolteacher president and began to do for teachers what the AMA and ABA were doing for doctors and lawyers.

So it went in every field—in response to genuinely anarchic conditions, "professional" organizations were founded, standards and educational requirements promulgated, and salaries raised. The social workers formed the National Federation of Settlements in 1911. The American Political Science Association began in 1903. Journalists have never succeeded in professionalizing themselves the way doctors and lawyers did, but they did begin to put forth the idea that objectivity was the highest ideal of their field, which gave it the sort of technical, disinterested flavor favored by the times. The huge, immediate success of *The New York Times* after Adolph Ochs bought it in 1896 and gave it a sober, impartial personality was probably the watershed for professional journalism.

All told, the number of professional and technical workers in the United States more than doubled between 1900 and 1920. The response of the arts to the force and complexity of the times was modernism, a loosening of structure; the response of the middle class was an immense strengthening of structure, an organizing of the life of the country.

By the middle 1960s, meritocracy had become a Florida land boom. Nobody wanted to be the fool who didn't buy in.

In most cases the key to the establishment of a profession was an educational requirement, which guaranteed both that a certain body of knowledge would be conferred and that the number of professionals would be limited. This had the effect of placing schools—and especially

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universities, which were then first becoming important in this country—in the position of toll-booths athwart the road to professional life. As the professional became more respected, more powerful and richer, access to universities became more important, and so it happened that the decision about whether someone would become a professional was transferred to the schools. Thus the Progressive ideals of system and fairness had to be applied to school admissions, and the science of determination of merit was born. The first Scholastic Aptitude Tests were administered in 1926.

In the old days before Progressivism people entered the professions mainly through apprenticeship, a system that had no uniform standards and so, to the Progressive mind, left the way open to favoritism, quackism, and other horrors. But apprenticeship had the great advantage of putting in young people's minds that access to their chosen fields depended entirely on how well they could do the work. The end of apprenticeship meant that the marriage between training and doing was ended forever (except in the case of medical residents, who, when their apprenticeships began, were already 26 or 27 years old, and thoroughly brainwashed in the ways of the meritocracy). Today access to a profession has nothing to do with the ability to do the work. It has to do with the ability to take college courses and standardized tests—with a measurement of potential rather than performance.

It took 25 years from the construction of the basic machinery of merit to the beginning of its psychological dominance of American life. The reason was that through the early forties, the meritocracy had a slightly theoretical air about it. Relatively few Americans could afford any education past high school. So getting into college and graduate school was not a gut-wrenching experience requiring the totality of one's attention. Those with the money to go to college could explore their interests in fairly relaxed fashion.

After World War II that began to change. The passage of the GI Bill forcefully planted in the public's mind the idea that college was henceforth to be a part of the American dream—a newly attainable way to get out of the working class and into the middle class. The subsequent huge increases in federal spending on education, along with the prosperity of the postwar years, meant that for most people college was at last a real prospect. In 1940, 9.1 percent of the population between the ages of 18 and 24 was enrolled in institutions of higher education. By 1958 it was up to 21.2 percent, and by 1970, 32.1 percent.

Meanwhile, as the children of the baby boom came of school age, getting into school for the first time became extremely difficult, and admissions committees became extremely powerful. College and graduate-school admissions were getting to be the crucial early moments in life, the times when one's fate was determined. So they naturally took on a central importance in people's lives. They became, in fact, more important than deciding what to do in life, as anyone who has been through the process knows. The meritocratic machinery became an end in itself rather than a means to the end of competent people in the professions. Many competent people were in fact being turned away from the professions.

If you score high on your SATs, you probably secretly think of the rest of your life as Miller Time.

Now, it might be asked, why should there be so much mania about the professions? Couldn't people just do something else instead and ignore the meritocratic machinery? The answer is that the Progressives had done their work so well, the professions had become a no-lose proposition. Once you got into school there was no risk whatsoever, since hardly anyone flunks out of professional school or gets kicked off the job once properly credentialed. You also were making more money than most, and you were respected because, unlike that of entrepreneurial businessmen, your success was not just lucky but "deserved"—the product of praiseworthy personality traits such as scholarliness rather than mere greed. The meritocracy had so cornered the market on prestige that business began to turn itself into a meritocracy, too, run by members of a profession called management who had been taught in graduate schools and who wanted very badly never to have to run a production line. By the middle sixties, meritocracy had become a Florida Land Boom. Nobody wanted to be the one fool who didn't buy in.

Professional Wrestling

What we really mean by merit—the quality that makes admissions committees want to let you in—has almost nothing to do with productiv-

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ity, economic or otherwise. So with the country in a crisis of non-inventiveness and nondelivery of the goods, all our machinery for picking leaders is set up to look for "A" students, and to encourage everyone with talent to become an "A" student—exactly the wrong approach. If you got 800s on your SATs, won a Rhodes scholarship, or were first in your class at Yale, you are, by the standards of the meritocracy, a demigod, but it's completely unproven whether you can actually do anything except academic work. In fact, amassing those credentials arguably makes you less likely to do anything in the future, since having won them you probably secretly think of the rest of your life as Miller Time.

There is a difference in value to society between writing regulatory impact statements for Arthur D. Little and opening a steel mill.

That a system designed to weed out hacks in the professions has taken on such a vigorous life of its own might be amusing if it weren't that its rise and America's fall seem so intimately connected. The moment (probably in the mid-sixties) when it began to seem that the quest for credentials of merit was the central obsession and organizing principal of our society was also the moment when it began to seem that our large organizations had stopped working. Since then the notion of merit has badly hurt the country.

In the personal sense, the effect of merit on people's lives is mostly negative. At an early age, a large share of the population is shut out of any chance for significant economic advancement or potential for power. The situation here isn't quite so bad as in England, where flunking the O-level exam at puberty dooms you to a life of hard labor, but we're getting there. It is virtually impossible for somebody who, say, gets a 400 on his SATs to become a general, a lawyer, a doctor, an investment banker, or an important government official. Today, newspapers seldom hire anyone who's not a college graduate. We have effectively robbed ourselves of the leadership and creative and managerial skills of two important groups of people: those who simply don't catch fire until adolescence is over and done with, and those who do poorly on standardized tests (which, by the way, predict performance in school quite accurately but performance on the job not well at all).

The lot of those who are judged to have merit is too cushy to evoke much sympathy, but nonetheless merit does take its toll on the meritorious. From the moment of the first delicious meritocratic *frisson*—the moment when you find out you did well on your SATs, say—you will always believe in some deep way that the world owes you a living and that you are better than other people. Because it is so systematic and "fair," the meritocracy tends to obscure the role of luck in real life and so creates an upper class that believes it has earned its station.

Because it has set forth such a precisely defined version of success, it traps people early on into suppressing their yearnings and talents in other directions. Hang around a suburban neighborhood long enough these days and you'll see the smart kid who's a little offbeat—catches insects, takes apart watches—and not a good student pronounced to have a "learning disability" and packed off to lessons in reading comprehension, which is what the SATs test.

These days an "underachiever" is someone who does well on SATs but poorly with grades (you *know* he should be doing better); an "overachiever" is someone who fares poorly on SATs but excels in school (you know he doesn't *deserve* those grades, he must be *working* for them).

The meritocracy also confuses its members about the way the world really works. As even meritocrats usually realize one day, people are valuable to society according to their output. What makes a surgeon good is how well his patients do after the operation; a running back, his yardage; a salesman, his sales; a writer, the quality of his writing. But in the more "professional" fields, because entree is determined by input (test scores, grades, and so on) rather than output, people's training confuses them about whether the point of life is to accumulate credentials or actually do some specific thing well. A wonderful example is the pecking order of law reviews, which are of course among the great credentials in our society while also being tangible enterprises requiring output. There are two ways for a law student to get on the law review: through grades and through a writing competition. The writing competition tests exactly what law review editors need most—the ability to write notes for a law review. Grades test merit. Of course, getting on the law review through grades is vastly more prestigious, and those who do so will in unguarded moments sniff about their colleagues

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who, losers that they are, had to "write their way on."

If it seems to you that merit is mostly a fraud and that we ought to be thinking instead of ways to reward the simple ability to deliver the goods, then you will feel lonely, even slightly crazy, in America today. Hardly anybody seriously questions merit.

People do address the subjects of inequality, success, ambition, upward mobility, and distribution of resources all the time, but always in a way that buys the fallacy that the meritocracy—standardized tests, applications, degrees, credentials—is the only possible means of slicing up the pie in America. Just as the conventional debate over defense is carried on in terms of more versus less spending and ignores the quality of what the money buys, the terms of the debate over meritocracy concentrate on the fairness of its selection mechanism and totally ignore the question of its productivity.

Social critics, for example, have been carrying on a war in recent years over whether or not people should be ambitious. First flower-power professors like Charles Reich gave voice to the widespread feeling that ambition is bad and that people should mellow out. Reich was a law professor and lifelong super-meritocrat; the issue for him was law versus sitting on the beach at Big Sur. Then the neoconservatives struck back by defending ambition; most recently Joseph Epstein, editor of *The American Scholar,* wrote a book called *Ambition,* the point of which is that ambition is good. But Epstein and Reich really think exactly the same way—for both of them, the question is the law professorship versus sitting on the beach, though they come down on different sides. The notion that there is productive ambition and unproductive ambition—that there is a difference in value to society between writing regulatory impact statements for Arthur D. Little and opening a steel mill, and that the meritocratic version of ambition will lead you to choose the less productive of those two jobs—is not addressed.

The drama of life becomes who gets the most-prized billets—the partnership, the assistant secretaryship—rather than what is accomplished.

Similarly, there is a long-running and much more substantial debate over biological determinism and intelligence testing. The determinists say that most human traits—and in particular intelligence—have a genetic origin, and that intelligence can be accurately measured. Their opponents (represented best lately by Stephen Jay Gould in his book *The Mismeasure of Man*) say intelligence is not measurable by the standard tests and is largely a product of environment anyway. What both sides implicitly agree on is that intelligence test scores (whatever they reflect) represent success in life, and that if they are discredited, hierarchical society itself will have been dealt a crippling blow.

In education, all arguments assume that the credentials won in school are the most important facets of life—that's why busing is an important issue. The debate over SATs has to do with whether they're culturally biased, not whether they should exist at all. Social philosophers argue over equality of opportunity versus equality of result, but "opportunity" always turns out to mean attending some school, rather than, say, making sales calls.

Quite often the parents of young children are amazed by how soon the meritocratic round of testing, applying, and accumulating credentials begins and how forcefully it shapes their children's lives and personalities. But much as they may not like it they assume that's just the way life is and press on. As the children themselves grow older, they may complain, too. In a top-flight high school like Walt Whitman outside Washington or New Trier outside Chicago, the level of gut-wrenching emotion is far greater on April 15, when college acceptances arrive, than on the day of the homecoming game: on college day the whole course of your life is determined. So it continues. Twenty-six-year-olds who join Wall Street law firms today seldom think the work they'll be doing will be productive or even interesting. They just accept it and to the greatest extent possible continue to focus on input, judging their progress by their salaries and perquisites. The drama of life becomes who gets the most-prized billets—the partnership, the assistant secretaryship—rather than what is accomplished. The sense of achievement is provided by one's title and the name of one's institution.

Even at IBM and Exxon, people below the very highest levels seldom are fired. The generalized incompetence that pervades our society is a direct product of the meritocracy's focus on potential rather than performance. The meritocracy

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has put the cart before the horse. Invented to staff institutions that were invented to cure the excesses of the Gilded Age, it is now going through an excessively gilded age of its own.

Jean-Claude Killy's Solution

These people at the upper reaches of the meritocracy are extremely hard-working and conscientious. Most of them are that way naturally, and if they're not they're well aware that the senior partner keeps close watch on who bills the most hours and works the most weekends. Often they invent work for themselves even when there's nothing to do, furiously juggling the meetings, phone calls, and memoranda that anyone who has ever worked in an office knows can take up an infinite amount of time. What they don't do is think about their performance and how it can be evaluated; in fact, they always fight like hell to keep their performance from being evaluated. It is much, much harder to get drummed out of a profession for incompetence than it is to get into the profession in the first place.

As a result, the people in the middle and lower levels of the meritocracy—high school teachers, say, or planning analysts—can also get away with being extremely lazy and incompetent if they're so inclined. Like their counterparts throughout the meritocracy, they're exempt from regular evaluation of performance.

In books on the subject of success and how it is defined, one great hero emerges. He is David McClelland, a psychology professor best known for his 1961 book, *The Achieving Society*. McClelland's work comes at the subject exactly backwards. First, it assumes, a society needs to be productive and to grow economically. Second, entrepreneurs promote economic growth. Third, "a particular human motive, the need for Achievement, promotes entrepreneurship." This need for achievement turns out not to be exactly what we think of as ambition. It has little to do with money and almost nothing to do with merit as we define it; it has more to do with a willingness to take risks and a desire to produce high-quality results. McClelland's theory is that the need-for-achievement quotient in people's ambitions has more influence on the course of society than larger economic or government forces.

In the 1960s McClelland devised a way to give people in slowly developing countries achievement lessons, and he went to India and Mexico to try it out. In these lessons (which, it turned out, dramatically boosted the economic productivity of the people who took them) teachers asked students questions like "What do you want to accomplish in the next two years? What specific steps do you plan to take to achieve that goal? How do you feel about the possibility of achieving that goal? How strongly do you want to achieve that goal?"

When I read those questions, I knew they sounded familiar. Where had I heard them before? What place had I been that had figured out the secret of channeling the desire for success in socially and economically useful ways? Was it high school? College? Did they ask those questions on the SATs? No, it wasn't any of those.

Then I remembered. McClelland's questions reminded me of a cassette tape I own called "The Power of Goal Setting" by Paul J. Meyer. Paul J. Meyer is president of Success Motivation International of Waco, Texas, a reedy-voiced secular Elmer Gantry who sells motivation tapes to down-at-the-heels aluminum-siding salesmen in Fordyce, Arkansas, and other people like that. I'd always thought of Meyer as a quack and a fraud. I dug out the cassette and played it.

"Jean-Claude Killy," Paul whined. "I watched him on television here not long ago. He set a goal at the age of 14, that in ten years he would win three gold medals at the Olympics. And he did, and now Chevrolet sponsors him, and, I don't know, what does he make? Two, three, four million dollars, as I understand it, in the sponsorship. He actually maybe doesn't have as much natural talent and ability as others, if you think about it. The difference is, he wrote it down specifically and developed a plan that he was gonna achieve by the time he was 24."

There it was—goals, just as in David McClelland's studies. I don't mean to make too much of it, but it does seem possible that even something so obviously dumb as Success Motivation International does a better job than Harvard Law School of infusing people with the sort of aspirations that the country most needs right now. People of talent should not be devoting their lives to credential-mongering, but the merit racket constantly encourages that. We need, instead, new machinery aimed at encouraging and rewarding *results*, not potential.

Does that sound far-fetched, as if I'm suggesting human nature can be changed? It's not. Human nature dictates that people will always be ambitious and want to be successful. But the way success is defined—and therefore the way the ambitious behave, and by extension the nature of the whole society—is malleable. It can be changed. The Progressives did it once before and it can be done again—this time with a better effect on the country. □

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WHO'S WHO in the Administration

James Baker, Edwin Meese, and **Michael Deaver** seem to get on surprisingly well. But this comity may be starting to crack under the strain of major (as opposed to tactical) disagreements. Most recently Meese, and especially Deaver, argued hard that budget director **David Stockman** be fired. Baker, who was Stockman's ally in the futile effort to reduce defense spending, convinced Reagan to keep him. Sources say more intense battling within the troika may be inevitable. . . .

One angle that the press missed in the AWACS vote was the inadequacy of Reagan's highly touted congressional relations operation. Throughout the spring and summer, as the administration scored victory after victory on Capitol Hill, this part of the White House team was viewed in Washington as especially effective. Reagan's congressional liaison chief, **Max L. Friedersdorf,** looked like a master lobbyist—particularly in comparison to Jimmy Carter's man in the post, an ineffective Georgian named **Frank Moore.**

For those who watched closely, however, there were danger signs. Several Republicans who threatened to vote against the Reagan budget, for instance, were confronted with the prospect of losing not only projects or programs that helped their districts but petty conveniences like tickets for constituents for White House tours. The latter approach doesn't help bring a congressman around (it poses no serious threat), but it can antagonize him enough to vote against a future administration-sponsored bill.

Still, the real shortcomings of the White House congressional liaison operation weren't clear until the AWACs vote, which should have been easily in hand weeks before the package squeaked through. According to Republican sources in the Senate, **Richard Allen**'s botching of his assignment to line up votes was compounded by further errors as the vote neared. Some of the senators whom Reagan was advised to lobby were already very firmly committed, a waste both of the president's time and of the valuable chips he has to offer in such situations. Smart lobbyists know that you should concentrate on the swing votes—the members whose positions are soft—and leave the others alone. It made sense, for instance, to work on someone like Roger Jepsen of Iowa, who, despite his stated opposition to the sale, was clearly susceptible to presidential persuasion (he eventually voted with Reagan). But several other senators were unshakable in their opposition and Reagan was misadvised that they possibly could be convinced to change. Such advice is symptomatic of why the administration had so much trouble with the Republican Senate in the first place on a vote of this kind.

In

WHITE HOUSE

Chairman, Foreign Intelligence Advisory Board—**Anne L. Armstrong** was ambassador to Great Britain under President Ford.

Deputy Counselor to the President—**James E. Jenkins** has been executive vice-president of Mark Briggs and Associates, Inc., a local government and economic consulting firm.

Special Assistant to the Chief of Staff—**James W. Cicconi,** a former general counsel to the Texas secretary of state, will report to James Baker.

Assistant Director for Budget Review, Office of Management and Budget—**Carey P. Modlin** is a career civil servant at OMB.

Administrator for Information and Regulatory Affairs, Office of Management and Budget—**Christopher C. DeMuth** has been a lecturer at Harvard and a contributing editor of *The American Spectator.*

Director of Fiscal Analysis, Office of Management and Budget—**Darwin G. Johnson** has been deputy to the chief of fiscal analysis.

COMMERCE

Undersecretary for Travel and Tourism—**Peter McCoy** was staff director for Nancy Reagan.

HEALTH AND HUMAN SERVICES

Executive Director, White House Conference on Aging—**Betty Brake** was deputy associate director for ACTION's older-American volunteer programs.

JUSTICE

Assistant Attorney General, Tax Division—**Glenn L. Archer** was a senior tax partner in the Washington firm of Hamel, Park, McCabe and Saunders.

Assistant Attorney General for Research, Statistics and Special Projects—**Beverly E. Ledbetter** was general counsel for Brown University.

LABOR

Assistant Secretary for Policy Evaluation and Research—**John F. Cogan** was an economist at Stanford's Hoover Institution.

Assistant Secretary for Veterans Employment—**William C. Plowden, Jr.,** had held a similar position in South Carolina state government since 1976.

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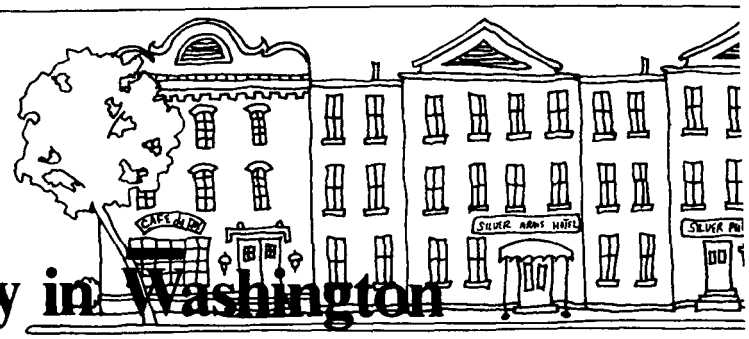

Where to Stay in Washington

Capitol Hill

The Hill is where much of the action—and inaction—in Washington takes place. In addition to the Capitol and congressional office buildings, it houses the Supreme Court, the Library of Congress, the SEC, and numerous state offices, associations, and other groups whose main purpose is to lobby Congress.

While the Hill is a good mile or two from the White House and the main business, restaurant, and shopping district, the National Gallery and the museums on the Mall are a reasonable walk away. Two subway lines and several bus routes will drop you near the government agencies along Pennsylvania Avenue and downtown, and, if you are traveling by train, Union Station is right there. With only four hotels currently in operation (another opens in a year or so), when Congress is in session, space is tight. So book far in advance or plan to come during a recess—or on a weekend, when you can take advantage of lower rates.

The Bellevue, 15 E Street, N.W., (202) 638-0900. The Bellevue is the Hill's modest hotel and is priced accordingly. The rooms have been recently refurbished in traditional hotel decor, and most have both a queen-sized bed and a sleep sofa. A single is $55, a double $65, and the two suites are $80 and $150. Two children under 12 can stay in your room at no charge; adults are $7 extra. Parking is $3.75 a day. There's no room service, but an inexpensive breakfast and lunch are served daily in the cafeteria and lunch and dinner in the **Tiber Creek Pub,** where there's live music Tuesday through Saturday. It's not a hotel for meetings—there's one small room for seminar-sized gatherings.

Quality Inn, 415 New Jersey Avenue, N.W., (800) 228-5151; (202) 638-1616. Comfortable and clean, the Quality Inn is a good, no-nonsense hotel. Singles, $54-$78; doubles, $66-$92; suites (no kitchens), $135-$185. No charge for children 16 and under, and parking is complimentary. In the summer there's a rooftop pool, sauna, and exercise room. The **Coach and Parlor** restaurant serves moderately expensive food. A coin-op laundry and one-day valet service are available, and soda, cigarette, and ice machines are on every floor. There are seven meeting rooms.

The Hyatt Regency, 400 New Jersey Avenue, N.W., (202) 737-1234. Six-story, glass, chrome, greenery-bedecked lobby with skylight, escalators that whisk you in and out, and glass elevators that take you up and down—yes, this is a genuine Hyatt. Unfortunately, this is what you seem to be paying for, not your room, which, unless it is one of the more tasteful suites, certainly does not live up to its price. Singles are $85-$105; doubles, $105-$125; suites (with wet bars), $250-$625. Additional persons in a room are $20 each, and parking is $10 a night. The restaurants maintain the high-price standards: **Jonah's Oyster Kitchen,** which features a wide variety of seafood in a nautical setting; **Hugo's,** where you get a spectacular nighttime view of the Capitol with the expensive, and not as spectacular, French fare; and the cafe-style **Park Promenade,** just off the lobby, which is more reasonably priced but not really coffee-shop level. There is one bargain, however—the weekend rates: singles, $48-$53 for two nights; doubles, $58-$63.

The Capitol Hill, 200 C Street, S.E., (202) 543-6000. When it officially opens in January, this will definitely rank as the Hill's most attractive hotel. The 153 rooms—all with equipped kitchens and living, dining, and sleeping areas—are spacious and elegantly decorated. Its location has some advantages—it's a block from the Pennsylvania Avenue shopping and restaurant area and is the only hotel near the three House office buildings. There's no restaurant, but the hotel brings a complimentary continental breakfast and *Washington Post* to your door, and the concierge can order meals from Basil's, a nearby but very expensive continental restaurant, or send out for groceries.

Until January there are special pre-opening rates: suites are $65 for corporate and $50 for government visitors. Regular rates are $75-$100, single; $87-$122, double. Additional adults are $12 each, while children under 12 are free. On weekends, for $125 two people can stay for two nights and three days and have two hours' use of a limousine. Parking is $5 a day and limited. There are three meeting rooms that accommodate from 15 to 50 people each.

—Donna Fenn

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SPECIAL OFFER! Deep Background

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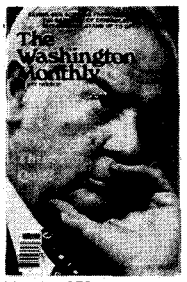

March 1979
Saving the Schools from the Teachers Unions
The Dark Side of Deregulation
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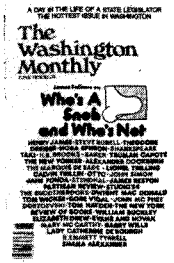
Why We Can't Stand Up to OPEC



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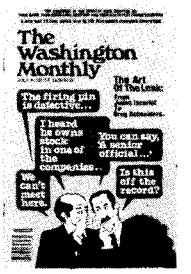

July/August 1979
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The Decline and Fall of the American Way of Regulation
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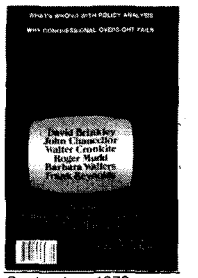

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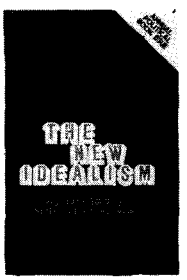
The Velvet Cage: The Life of
The Fantasies of Senators' Wi
What's Wrong with Policy Ana



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Taking the Babbitt Test
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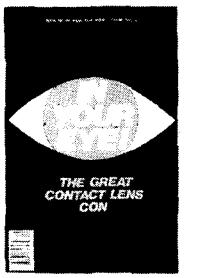

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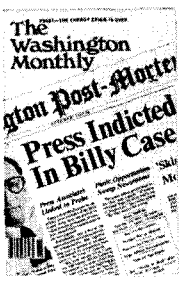
The Most Powerful Nobody in Washington



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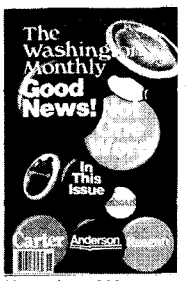
Reagan's Welfare Fraud
Billygate and the Press
I Didn't Lose, I Just Ran Out of Time



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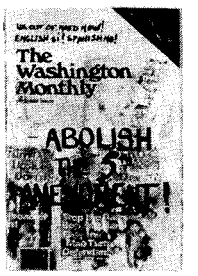
Ten Ironies That Made Our Nation What It Is Today
Life at a Southern Women's College



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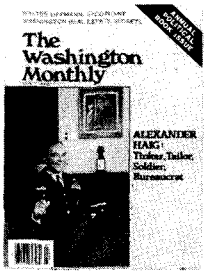
Scenes from a Political Marriage
The Case Against NATO
English, Si—Spanish, No



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Walter Lippmann and the Amer Sycophancy

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THE REAGAN COURT'S FIRST FOP

I am his Highness' dog at Kew
Pray tell me, sir, whose dog are you?
—Alexander Pope, for the collar of Frederick Prince of Wales's pet

by Blythe Babyak

"Oh, God, not you, too!" I thought when *The Washington Monthly* placed an urgent request for an article on Nancy Reagan's walker and mascot, Jerome Zipkin. Wasn't it bad enough that scarcely a day went by without *Town & Country, Women's Wear Daily,* or *People* running a picture of his pug face and plump dumpling body? Must an allegedly serious magazine add to the clutter? I feared that if I had to hear even once more about the aging real-estate heir's "diverting" talk or "perfect eye for detail," I should die of (pardon my Zipkinism) ennui.

The Washington Monthly, it seemed, was interested in the Serious Implications of Zipkin's activities and access to the First Lady. After all, hadn't Zipkin—with no apparent political connections to any party, philosophy, or issue of any sort—attended every major White House function? Hadn't he sat in the Reagan box at the 1972, 1976, and 1980 Republican conventions? Hadn't he had Nancy on his arm when she joined Prince Charles in New York City for the Royal Ballet? Didn't Zip the Lip regularly escort the president's wife to Monsieur Marc, the hair salon *he* recommended? Why does Nancy Reagan need someone to escort her to a hair salon anyway? Can't the Secret Service do it? Why, *The Washington Monthly* wanted to know, is Nancy mixed up with Zipkin, and why doesn't her husband do something about it?

These questions showed a tragic misunderstanding of Zip's role in Bi-coastal Society in general, and the Reagan marriage in particular. Suddenly I was atremble with concern for the public's right to know, with the need for fair and balanced reporting about Zip's real role. I sprang for the latest issue of Andy Warhol's *Interview,* where I knew I'd find an authoritative account of the First Fop's latest entrances. Let's see . . . dinner Tuesday with Diana Vreeland at Le Cirque. Wednesday one of the chic 750 sitting down for a glorious designer charity dinner at Saks (this means a dinner hosted by designers, not a designer dinner, although that may not be far off). Thursday a charity lunch at Barney's with Nan Kempner, Dru Heinz, and other rich ladies. Then on to Mortimer's for a "too IN-for-OUT" dinner among the glittering likes of Diane von Fursten-

Blythe Babyak is a New York writer.

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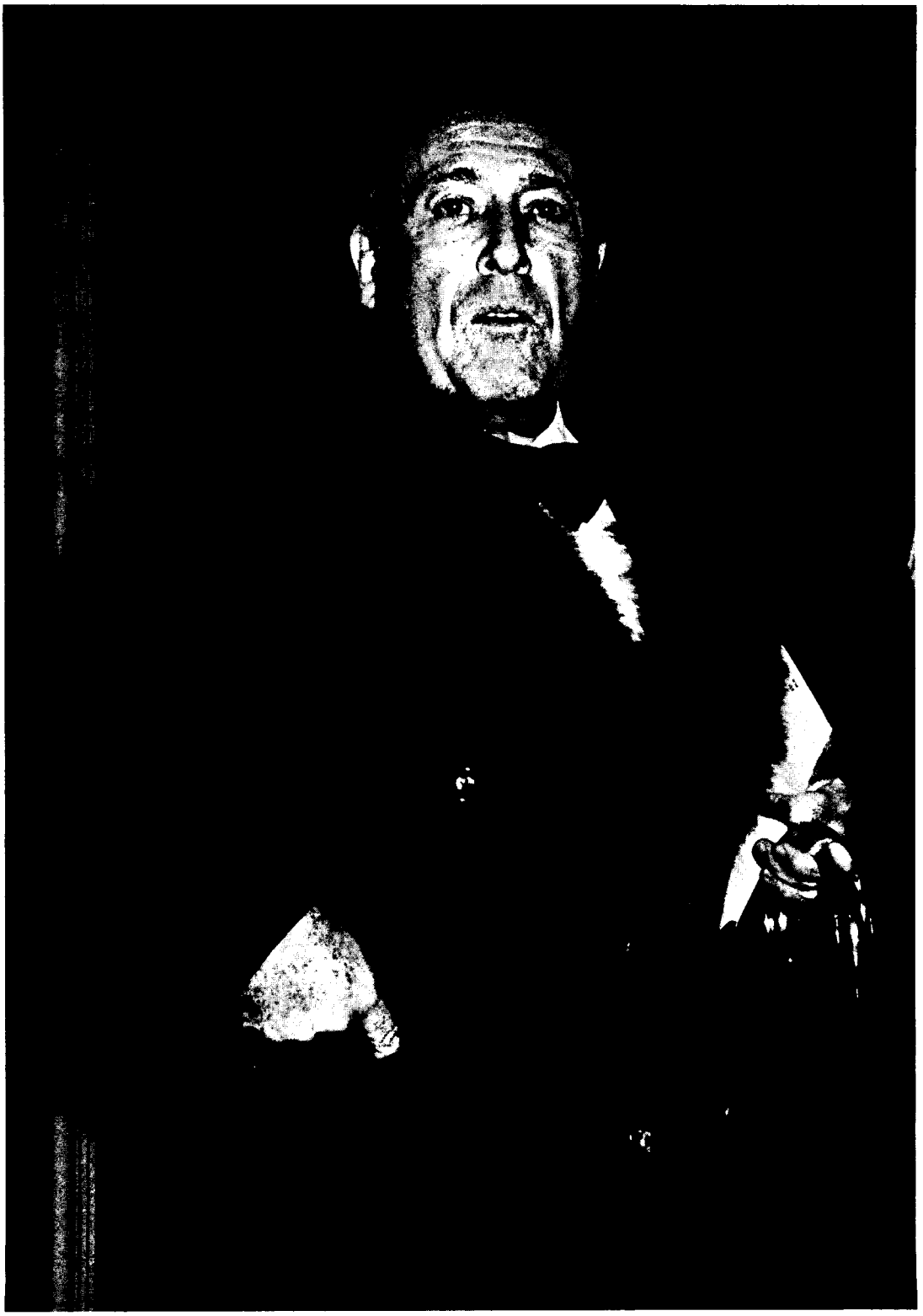

PHOTOS BY RON GALELLA

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berg. No wonder he's plump. Does he ever do anything but eat? Ah, yes he does, and *Interview's* Bob Colacello says it outright: "Jerry Zipkin, without whom nothing much can happen these days."

Why on earth is a 66-year-old Princeton dropout considered such a Must by le tout New York? Why wouldn't Nancy think of dropping by Adolfo's without him? Why do the fierce, face-lifted ladies who lunch at Le Cirque dissolve into approving coos at the very drop of Zipkin's less than mellifluous name?

Zip's prominence can't be attributed to his brilliant career. After all, he inherited the Park Avenue properties that made him a wealthy man. Nor are sharp-eyed society birds aflutter over any discernible physical beauty. All the cashmere scarves, Turnbull & Asser shirts, and David Webb emerald cuff links in the world wouldn't make a half-blind Haitian charwoman mistake Zip for David Niven. No doubt about it, Zip's enormous appeal remains a mystery to OUTsiders. Even many INsiders are not exactly clear on its meaning. Make-or-break *Women's Wear Daily* first termed Zipkin the "Social Moth." Then the "Social Mouth." "Ugh, why write about *him?*" asked one *WWD* veteran, with genuine disgust.

The Social Mouth

To understand Zipkin, you must understand the True Import of gossip. Gossip is not just "talk"—it's social glue. Constant talkers influence more than whom and what we see; they influence *how* we see them. Social scientists call gossips "liaison types." Friends liken Zip the Lip to an air traffic controller because *everyone* who wants to land in the right place checks in with him just as soon as they Concorde into Kennedy or shuttle up to LaGuardia. Zip plugs them into what's happening—what divine little dinner can't be missed, who showed up at yesterday's ball in last year's Lagerfeld, and what *most odious* designer is trying to crash their chic circle.

Who are these chic sorts anyway? They are interior decorators, designers, record company presidents, investment bankers, idle rich, nouveau riche, and nouveau famous, with a smattering of prewar socialites, unlanded gentry, and some truly celebrated writers with their best (if not their biggest) works, alas, behind them. Many of these denizens of Jerry's World actually do say things like "daaarling," "to die over," "just *too* dreadful," "so *very* vermeil," and "*too* divine"; live to be invited, hiss and tell; and truly fancy themselves some sort of American Aristocracy, though most have roots about as aristocratic as Diner's Club cards. (They're not Fitzgerald's "careless people," though that's whom they're frantically aping.)

Lacking the neat rules of the English class system, nearly shredded by the sixties' social revolutions, part meritocracy and part plutocracy, part Jeffersonian democracy to equal parts maitre d's whim, publicist's will, and editor's way—American society doesn't quite know how to sort itself out to enjoy the New Affluence. The free-floating criteria for being IN in America make everyone (yes, even Jerry's Girls) always feel a trifle insecure because they may be on the verge of being OUT. Which brings us to one of the reasons they need Zip.

Rather like the bouncer at Studio 54, Zip is famous for being able to recognize the famous at 30 paces. A ruthless snob, Zip helps bring order to a social scene otherwise bordering on anarchy. His gossip (whom he talks about, and, just as telling, whom he doesn't) can be of critical importance to the hostess wondering *which* titled Italians really rate an invitation. More important still, when the man known for knowing "the world's richest writer" (Maugham) and "the world's richest artist's" daughter (Paloma Picasso) treats our adopted, lonely little actress's daughter Like A Queen, Nancy gets a bigger *arriviste* rush than when they play "Hail to the Chief." "The difference between a flower girl and a Lady is not how she behaves, but how she is treated," an Act Three Eliza tells Professor Higgins.

Only after Zip decides who's IN (People Like Us) does the telling start. Called "snide," "bitchy," and "ridiculously affected" by some, Zipkin is "marvelously entertaining," according to Fashion's Empress Dowager Diana Vreeland. Nancy Reagan herself has described her sidekick as "a sort of modern-day Oscar Wilde." (Presumably all Smith graduates know Wilde's life history.) Nancy added, "He has more depth than a lot of people in our lives." Zipkin's Precious Few repeatedly praise his loyalty ("when he's your friend, he's really your friend, he's not phony-baloney"), and they should know just how phony and bitchy their world can be.

"When you tell him a secret, you know it will go no further," swears knockabout Nan Kempner, fabled friend of Nancy, inheritor of money, and buyer of clothes. (You know, *the* Nan Kempner, internationally famous for taking large numbers of diuretics and jetting about the world buying enough stuff to outfit a small but very chic army.) On this one point both fan and

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PHOTO BY TONY PALMIERI/WWD

ZIPKIN'S ROLE IS TO TELL HIS GIRLS THAT THEY'RE BETTER, MORE CHIC, MORE REFINED," ONE SOCIETY REPORTER EXPLAINS. "SOME PEOPLE THINK IT'S CYNICAL FLATTERY ON HIS PART, BUT I THINK HE REALLY ADMIRES THEM. THEY'RE THE TYPE OF WOMEN HE WOULD HAVE LIKED TO HAVE BEEN."

Day and night, Zip's at the service of Nancy and friends such as Nan Kempner, below.

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foe agree—when it comes to keeping his Chorine's Secret, nobody does it better than Jerry.

"You know how over the centuries the wives and consorts of the important have recorded their doings in diaries?" asked one observant beau-monder, returning a call while changing from brunch camel's hair to dinner tails. "Nowadays that's too dangerous. Such things get stolen and printed. Besides, who has the time? Perhaps talking to Zipkin takes the place of a diary for powerful women—or women who at least see themselves as important." Here again, instead of being a liability, Zip's Triple-A No-Talent rating reassures his girls that he hasn't the teeth to turn and bite like that lap dog of the sixties, Truman Capote. But Jerry isn't just a discreet ear. He offers his girls Practical Advice.

Reflecting Reflected Glory

"We think he's terrific," First Friend Betsy Bloomingdale once said of Zipkin. "When he says something to Nancy or Nan or me—you know, your skirt's too long, something like that—you say, 'Stop, stop!' Then you *think* about it and say, 'Well, maybe he's right.' Jerry's got that eye for perfect detail."

Whether it's skinny children sitting in a Djakarta slum doorway picking off each other's lice, or the Social Moth fussing over the First Hemline, it's still what sociologist Erving Goffman calls "ritual grooming," and it's still accompanied by "grooming talk." *They* worry. He listens and comforts. After all, Perfection isn't easy. (*Il faut souffrir pour etre belle.*) The empty nest, your prominent husband's Distressingly Casual Indiscretions after you absolutely devoted yourself to giving him the House Beautiful and The Limelight, can all begin to get you down so bad you can almost feel your Monsieur Marc coif and that perfect orchid in the just-so bud vase by your bed start wilting. You're on the verge of a nasty, hysterical bout. You want to at least rage at your husband before he leaves in a rush, but last night he didn't even get home. (Away again on Business.)

What's sadder, madder, and more brittle than an aging debutante? *You'll* show them. You will kill yourself. You will not get up. You will fire that clumsy, thieving, alcoholic of an upstairs maid. You . . . you . . . but wait a minute, isn't that Jerry on the line? Jerry, the first note of whose haughty tones soothes your "wasted life" scruples immediately. (After all, isn't he a *man* who has done *even less* with his life than you with yours?) Jerry, who notices and appreciates the slightest shift of highlight in your streaked hair? Who approvingly notes every four ounces lost? Who Always Takes Your Side and agonizes with you over guest lists, seating charts, and menus?

"Those women all play a game called 'I'm more refined than you are,' " one society reporter explains. "Zipkin's role is to tell *his* 'girls' that, yes, they *are* better, more chic, more refined—and they love him for it. Some people think it's all cynical flattery on his part, but I think it's not. He really admires them. They're the type of women he would have liked to have been."

The Lip not only helps his girls keep chin up and every hair in place with endless subtle suggestions. He also enhances their self-esteem by being the flattering mirror that reflects (and magnifies) their reflected glory. And they love him for it. Their husbands, whose *own* idea of acceptable male vulnerability is John Wayne with a jammed gun, nevertheless know a convenience when they see one. Zip's the Other Man without the Messy Complications. (Better Jerry than Gianni.) Zip the Lip is Pacifier to the Patrician.

Give to the Rich

"Friendship means more to me than anything. Of course it takes up a lot of my time."—Zip the Lip to *Town & Country.*

The phrase that keeps dropping from his girls' lips whenever asked why they love Zip is "he asks for nothing." "He never burdens you with his problems, is always concerned with yours," as Nan Kempner once put it. Riddle: What kind of person would unblushingly volunteer that some one was a dear friend because he "asks for nothing?" Answer: A rich one. Unlike the rest of us poor slobs, for whom money is just a means (albeit a much-desired means) to an end, for the rich, *money is identity.* (Even the nonreligious still believe in Wealth after Death.) Stinginess that starts with money soon, for the rich, embraces psychic goods as well. It can be a painful loss of self to part with so little as the price of lunch or flowers. Understanding (and providing for) this character trait is the key to Zip's success. No one has ever accused *him* of being stingy. Quite the contrary, this humble multimillionaire moves among vastly wealthier misers lavishing painstakingly selected gifts, picking up checks, paying for cars. Oh, how the rich learn to love a lively spendthrift! Was it Maugham who first taught Zipkin no man (or woman) is easier to buy than a rich one? No matter. To Those Who Have Everything, Zip tirelessly dispenses more.

One could almost feel sorry, did he not so pander to and encourage that absolutely unblushing selfishness. The whole rabidly competi-

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tive cult of "living well" for its own and only sake is about as fulfilling, rewarding, and admirable as the person of the Duchess of Windsor—whose lifelong example and bon mots ("living well is the best revenge," "you can never be too thin or too rich") so touched the hearts of poor little self-pitying rich people the world over. But even assuming our state of present mind-numbing materialism, where terms like "the good life" are instantly understood to refer to the state of one's chic instead of one's accomplishments, The Mouth's work as Gargoyle Priest of the Culte de Moi is still un peu de trop.

"Listen to the simplicity of her note," the Connoisseur tells the visitor from *Town & Country*, reading a "tasteful" missive from the wife of former Senator Abraham Ribicoff. One thinks again of Pope ("What woeful stuff this madrigal would be/In some starv'd hackney sonneteer, or me!/But let a lord once own the happy lines/How the wit brightens! How the style refines!") and laughs knowing that every age has had its foppish fools. Still, that the Reagan Court's First Fop has devoted his long and privileged life to marking meaningless distinctions between his fair (rich) ladies and the merely very well off masses tells us something about the tenor of the times. Contrary to Conservative assertions, cold blood does not necessarily a clear head make. Even Zip's "put a good face on it" virtues are exercises in denial. There's no courage in pretending. If I can deny my moment of post-menopausal angst by popping a jelly bean and putting an Adolfo over it; if I start to feel "growing old isn't so bad! Look how smartly Nan, Betsy, Jerry, and me are facing it," then I can deny your pain, too. What's all this screaming about social security cuts anyway?

I am not for one minute suggesting that a number of Limousine Liberals haven't distinguished themselves as toadies. There was often, though, a relevant difference. At least they *said* they cared for something, however flawed. "Yes, and so were bigger hypocrites" comes the traditional conservative reply. I must agree. But it has taken the Reagan Court and its First Fop to make me understand the virtues of hypocrisy. It can restrain excess, or at least slow its pace. The hypocritical tyrant paying lip service to justice can, for instance, kill only as many as he can bury under cover of darkness.

So, Nancy, maybe it's true. Maybe we're all born irredeemably greedy and selfish. But can't you be just a little hypocritical? Can't you just *pretend* you care about something in life besides handbags and hors d'oeuvres? □

continued from page 47

STATE

Assistant Secretary for Human Rights—**Elliott Abrams,** a former aide to Senator Daniel Patrick Moynihan, has been assistant secretary for international organizations.

Ambassador to Bulgaria—**Robert L. Barry** was deputy assistant secretary of state for European affairs.

Ambassador to France—**Evan Griffith Galbraith** was managing director of Dillon, Read & Co., an investment bank.

Ambassador to Nigeria—**Thomas R. Pickering** was assistant secretary of state for oceans and international, environmental and scientific affairs.

Ambassador to Tanzania—**David Charles Miller, Jr.,** has been special assistant to the assistant secretary of state for African affairs.

AGENCIES AND COMMISSIONS

General Services Administration
Associate Administrator for Operations—**Steven L. Hammer** was vice-president and general manager of the associate brands division of the Lee Tire and Rubber Co.

International Communications Agency
Chairman, Radio Free Europe/Radio Liberty—**Douglas Manship** was with Baton Rouge Broadcasting Co.

National Endowment for the Arts
Chairman—**Frank Hodsoll** has been deputy to White House chief of staff James Baker.

U.S. Parole Commission
Member—**Benjamin Baer** has been a U.S. Parole Commission hearing officer.

Veterans Administration
General Counsel—**John P. Murphy** has been with the San Francisco law firm of Chickering & Gregory.

Out

WHITE HOUSE
Assistant for Defense Planning, National Security Council—**Maj. Gen. Robert L. Schweitzer** was fired from the White House staff and transferred to the Pentagon after he gave an unauthorized speech on U.S.-Soviet relations.

STATE
Ambassador to Greece—**Robert J. McCloskey** has been named ombudsman for *The Washington Post.*

FEDERAL TRADE COMMISSION
Director of the Office of Congressional Relations—**Kathleen E. Sheekey** has joined the legislative staff of Common Cause.

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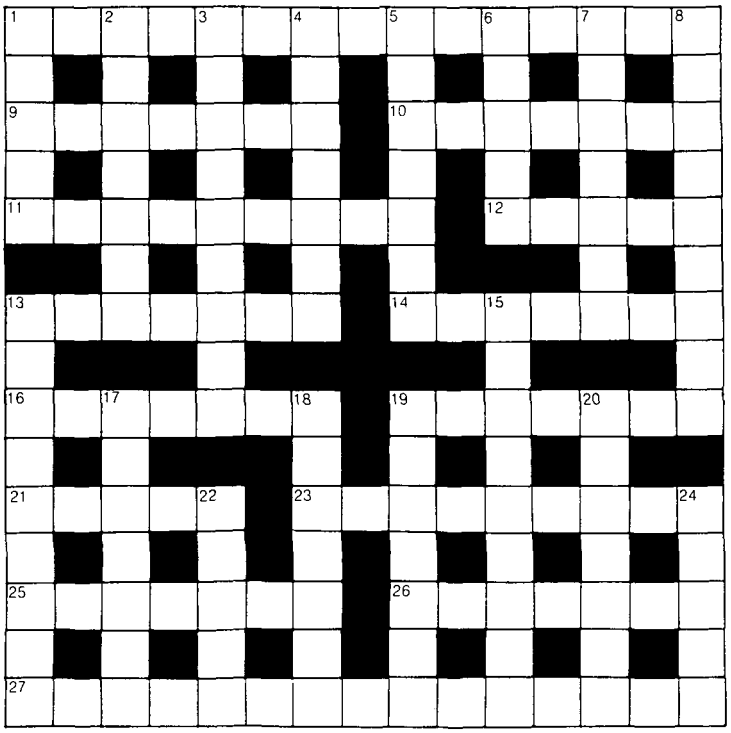
The Political Puzzle

by John Barclay

The numbers indicate the number of letters and words, e.g., (2,3) means a two-letter word followed by a three-letter word. Groups of letters, e.g., USA, are treated as one word.



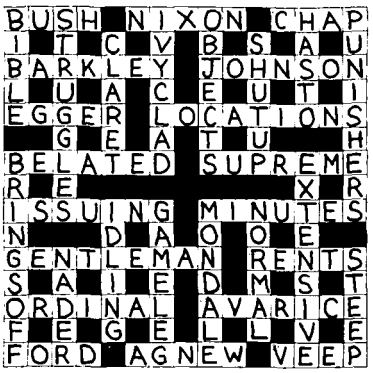
ACROSS

1. *Numero uno* makes dean anger priest. (9,6)
9. Caused little company to face raging tide. (7)
10. Sue takes the veil strangely and becomes hard to find. (7)
11. Meet a challenge or bury it? (9)
12. Myths, at least in a way. (5)
13. Routes are little ways around a tree. (7)
14. Deem a commercial tester? (7)
16. Iodine or mercury, for example. (7)
19. Race break from odd post tip. (3-4)
21. Yearned for motor bike? (5)
23. Changing a drawing? (9)
25. Wants her guns in the worst way. (7)
26. Wild Eastern tennis fanatic. (7)
27. Cleaners' meeting for 1 Across? (5,10)

DOWN

1. French soldier upside down, lubrication inside. (5)
2. Reliable cryptographer, once red, reformed. (7)
3. Block one rent-free arrangement. (9)
4. Makes fond to stop organs? (7)
5. She stands before tavern in the town. (7)
6. Blow up pure TNT last. (5)
7. Questioned intensely, girl led astray. (7)
8. Lend sheep clumsily for one in trouble. (5,4)
13. Vessel for straying Amish pets. (9)
15. Black dog who really gets around? (9)
17. Outlay in cash to index pens efficiently. (7)
18. Takes up stunt or puzzle. (5,2)
19. John or Paul or both, to make point *et seq.* (7)
20. French palace in Austria—nonsense! (7)
22. Legislatures sited in odd fashion. (5)
24. See, *e.g.*, simpletons. (5)

Answers to last month's puzzle:



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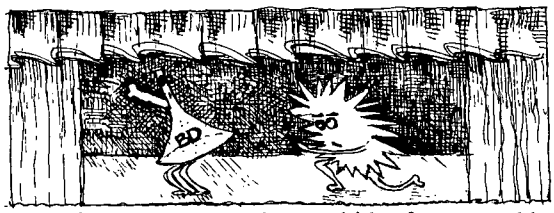
Gregg Easterbrook
ON POLITICAL BOOKS



Modern corporate takeover bids often resemble long-running soap operas. Waiting for Conoco to be sold, you remember, was like waiting for Franco to die. *Takeover Barons of Wall Street* is a work sure to please soap-opera fans. The entire book is about a single merger play—Sun Oil's unfriendly and ultimately unsuccessful bid for Becton-Dickinson, a pharmaceuticals firm.

The fact that it takes an entire book to describe one attempted acquisition says much about merger mania. "The Game," as author Richard Phalon calls it, can get very complicated, especially when both sides rev up lawyers and public relations specialists for full-scale psychological warfare.

Sun moves first by planning a "midnight raid" takeover. Instead of making a public offer to buy Becton shares (the most familiar merger strategy), Sun attempts to snatch them up privately. Success depends on acquiring several huge blocks of shares simultaneously (both to take Becton by surprise and complete the transaction before Sun's involvement causes the price of shares to rise). Months of strategy precede a 30-minute all-fronts assault on Becton stock; Sun is aided in this quest by a deposed Becton president whose sole goal in life is to screw the company directors responsible for ousting him.

Sun launches its bid, but just within sight of the magic 51 percent it slips up. The secret plot becomes known, trading on the stock is halted, and Becton falls back into a prevent defense. Becton's tactics are many and complex. It files lawsuits, sparks a Securities and Exchange Commission investigation, and floods Capitol Hill with lobbyists. The best-known Becton defender is Theodore Sorensen, but perhaps the most effective are Becton plant foremen flown in to visit congressional offices and announce they will lose their jobs if the sale goes through. Becton also plants numerous anti-Sun news stories, including one that suggests a Sun director has some mild misgivings about the deal. By the time Wall Street whisperers are finished twisting *that* one around, it sounds as if Sun is such a coven of dank evils its own officers are wracked by guilt. This points to the final and most successful defensive tactic (recently gaining in popularity, as the Kennecott-Curtiss Wright and LTV-Grumman firefights attest): attacking Sun officials by name to make them so mad they can't see straight. A classic ploy related by Phalon finds the target digging up unpleasant information about the suitor's chief executive and trumpeting it in an ad—not in *The Wall Street Journal* but in the chief's hometown newspaper, thereby embarrassing him (and his wife) before their personal friends.

Phalon, a *Forbes* reporter, provides a fast-paced and entertaining account of the action. He does not, however, waste much space speculating about what it all means. The only value judgment made clear is that the author—like business-school professors, lawyers, and consultants the world over—considers paper-shuffling the most important and rewarding aspect of modern commerce. "The Game" of takeovers "demonstrates that the entrepreneurial spirit still roams the land," Phalon concludes in his book's final line.

Small wonder, then, that our economy is doing a high dive into the wading pool. Entrepreneurs used to be people who created new things, not argued over old things. But traditional entrepreneurism required getting your fingernails dirty—designing products, debugging assembly lines, and dealing with the somewhat uncultured fellows who populate factories. Now our academic-oriented system teaches that only clean-hands work done with pieces of paper is socially respectable. Drones and dropouts are assigned the degrading task of actually making things, while our best brains sit in windowless conference rooms and swap statistics.

Phalon may think rearranging the title deeds to the *Titanic* is the ultimate human endeavor, but I don't. In the end, who cares who owns Becton-Dickinson? What matters is whether the firm makes useful, affordable products in sufficient quantity. Granted, ownership changes sometimes lead to improved production. But in The Game described by *Takeover Barons,* performance isn't even a factor—Sun wants Becton solely to expand its empire (immediately after the bid falls through Sun buys another company in an unrelated field), and Becton wants to stay independent solely to keep its top managers in their positions.

Reading this book, you can't help but think that if all the money, brainpower, and effort expended during the pointless Sun-Becton squabble had gone instead into product innovation, those companies would now be selling cars that fly and steel at 14 cents a ton. Things aren't likely to change until society once again considers product-making more important than paper-shuffling—and journalists stop considering The Game more important than the results. □

*Takeover Barons of Wall Street: Inside the Billion-Dollar Merger Game. *Richard Phalon. Putnam's, $13.95.*

Gregg Easterbrook is an editor of The Washington Monthly.

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Political Booknotes

American Farmers: The New Minority. *Gilbert C. Fite. Indiana, $19.50.*

Amnesty International: The Human Rights Story. *Jonathan Power. McGraw-Hill, $9.95.* Amnesty International was founded in 1960 by a British lawyer, Peter Benenson, who was outraged to learn that two Portuguese students had been sentenced to seven years in jail for making a public toast to freedom. He organized a group of friends to write letters to governments in behalf of such prisoners of conscience throughout the world. The group soon became an international organization, and today it is more than a watchdog; it is a political force that, through skillful use of the media, can sometimes stop the practices it once merely monitored. For example, its discovery of the Emperor Bokassa's child murders in the Central African Republic forced Giscard d'Estaing to send in troops against the man he called "my cherished relative."

Despite many such successes—all thoroughly described in this book—the organization has its problems. Some members object to any kind of help for terrorists—Amnesty campaigned for better treatment of the jailed members of the Baader-Meinhof gang even as they were using their prison cells to orchestrate more assassinations. Other members want the organization to go beyond aiding prisoners to taking stands like opposing arms shipments that help repressive regimes to carry out their dirty work.

The organization now has another problem that shouldn't surprise you—bureaucracy. "AI's great strength is its lack of pretension and ability to react quickly to turbulent events," Power writes. Yet the agency is now "confounded by the cold logic of bureaucratic growth, in which caution replaces spontaneity and Amnesty itself becomes a prisoner, hemmed in by the inertia of its size." In other words, if you're going to get locked up, better not do it during an Amnesty staff meeting. —*Michael Hiestand*

Enterprise Zones: Greenlining the Inner City. *Stuart M. Butler. Universe Books, $12.95.* A lucid description of an idea now fashionable among conservatives and some liberals. The point is to designate free trade or "enterprise" zones in blighted urban areas to attract small business and revitalize the neighborhood economy. Butler and those officeholders who agree with him—principally Jack Kemp—believe that if only government-imposed costs and red tape were reduced, a thousand flowers would bloom. By slashing or totally eliminating regulations, property taxes, zoning restrictions, the minimum wage, and Davis-Bacon "prevailing wage" requirements in certain areas, we might be able to create a climate that encourages business to take a chance on slum neighborhoods.

Butler, a Heritage Foundation economist, focuses here on small-business job creation. The enterprise-zone strategy he argues for makes some sense—if properly targeted. In other words, Reaganites should experiment first with different mixes of these incentives before adopting the idea as new dogma. "Greenlining" is not a panacea for cities, just an interesting tonic that deserves a try. —*Pat Martin*

The New Elite. *David Lebedoff. Franklin Watts, $11.95.* Those who agree with Nicholas Lemann's article on page 40 will surely want to read *The New Elite.* Lebedoff, a Minnesota state politician, explains well how two of our society's greatest achievements—nearly universal education and nearly total equality of opportunity—have allowed anyone from any background, no matter how humble, to rise to a position of uselessness. Today the most intellectually able are channeled into the least constructive occupations—law, consulting, foundation management. Their brains imprison them in stagnant, predictable fields instead of setting them free to create. Intellectuals don't even want to be artists any more; they want to be English professors who talk about artists.

Lebedoff sees as the ultimate villain not grad school or government expansion but marriage. He notes, for instance, that rustic life once caused intelligence to be randomly scattered throughout society. The bright village milkmaid had little choice but to marry the dull village blacksmith; that was bad luck for the milkmaid, but it caused an infusion of brainpower into the metalworking profession. Now fluid social institutions allow the intelligent to seek each other out, marry, and isolate raw IQ in one small segment of the population.

Probably true; unfortunately Lebedoff presents as proof two hypothetical twelfth-century peasants, "Thomas" and "Katherine," whose exact IQs he mysteriously knows. The book suffers greatly from this type of documentation. Much of what the author says is insightful—parts of the book struck me as genuinely wise—but missing are the flesh-and-blood examples that make an argument poignant. Lebedoff is likely to persuade only those who already agree with him; members of the New Elite will have an excuse to ignore his message, and that's a shame.

—*Gregg Easterbrook*

No Way to Run a Railroad: The Untold Story of the Penn Central Crisis. *Stephen Salsbury. McGraw-Hill, $19.95.*

Strategy and Choice in Congressional Elections. *Gary C. Jacobson, Samuel Kernell. Yale, $15.* Conventional political wisdom holds that national events and economic conditions decisively affect congressional elections. It is widely believed, for instance, that Watergate helped the Democrats score large gains in the House in 1974. Yet studies of individual voters show that what matters most to voters is the choice offered by the particular pair of candidates running in the district.

In this clear and concise book, the authors set out to resolve the contradictions between these two viewpoints by studying incumbents and their challengers. Their conclusion is unsurprising: it is the quality of the challengers and the vigor of

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Memo of the Month

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 24 1981

OFFICE OF
THE ADMINISTRATOR

MEMORANDUM FOR Associate Administrators
Assistant Administrators
Office Directors
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We have had some confusion as to the designations A/O and O/A. To avoid further conflicts, A/O will mean the Office of the Administrator and O/A will be Office of Administration.

John E. Daniel
Chief of Staff

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their campaigns that turn out to be the crucial factors in battles for seats in the House of Representatives.

When national conditions favor one of the parties, that party attracts better challengers, and these challengers receive more support from the national party committees, while the weaker party fields more inexperienced challengers and party resources are devoted to keeping incumbent seats. In 1974, 38 percent of the Democratic challengers had held prior elective office, while only 13 percent of the Republican challengers had previously waged winning campaigns. In 1980, the advantage of experience worked for the Republicans.

—*James Lyons*

Successful American Urban Plans. *W. G. Roeseler. Lexington, $26.95.* Bet you're thinking, "Must be a pretty short book." The author tosses out our largest cities, such as New York, Chicago, and Los Angeles, to concentrate on medium-sized places like Cincinnati and Kansas City. He finds them civilized and habitable, and explains what technical details of urban planning make them seem to work when their big brothers do not. This is a refreshing change from hazy urban studies textbooks that bemoan how the metropolises have failed, but neglect to suggest any solution.

—*Desiree Shannon*

U.S. v. Crime in the Streets. *Thomas E. Cronin, Tania Z. Cronin, and Michael E. Milakovich. Indiana, $17.50.* The authors have patiently studied the problem of crime and the appropriateness of a national response to it. The rise and fall of the Law Enforcement Assistance Administration is thoroughly documented. But after all this effort, Cronin, Cronin, and Milakovich lamely conclude that "more money is needed for systematic research and development of crime prevention. The national government should be much more in the business of designing, testing, and publicizing crime prevention strategies than of pouring out money and organizing conferences."

The language suggests nothing so much as some committee's evaluation of a scientific research project that unaccountably bogged down in midstream: "There remains a great need for systematic and rigorous measurement of the impact of . . . fosterizing experimentation and evaluation . . . unless we are willing to spend many billions of dollars more. . . ." And so on.

Unfortunately, the authors seem to have missed the crucial point, one that would never emerge from any of their cherished techniques of "evaluation." Crime in America is neither a scientific problem, nor is it a financial one. It is rather a matter of sagging morale. In this as in so many other areas, the educated classes in the U.S. have simply lost their nerve, having been bullied by a minority segment of liberal opinion into believing that violent criminals demonstrate not personal iniquity but societal inequity. We are *afraid* to punish criminals today—someone might call us uncompassionate or unenlightened. Beside that tremendous defect, a national blot, the various "research" and "evaluation" problems the authors identify are minor indeed.

—*Tom Bethell*

"Must reading for any student of government."—Charles Peters, *The Washington Monthly*

HOW COURTS GOVERN AMERICA

Judge Richard Neely

A candid, lively, and often irreverent appraisal of how courts make American democracy work. Neely, a justice on the West Virginia Supreme Court of Appeals, argues in support of an activist judiciary, basing his discussion on his extensive experience as both a legislator and a judge.

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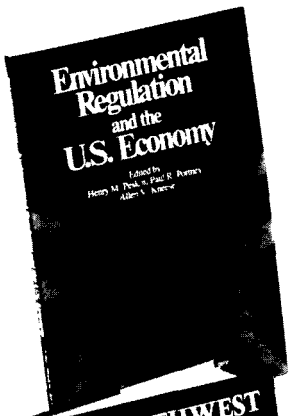
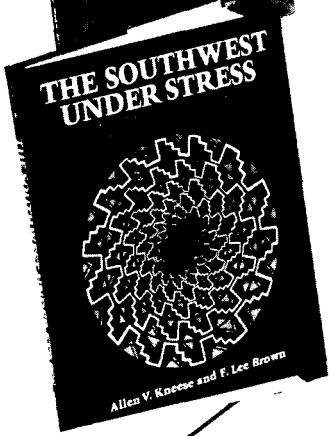
FROM RESOURCES FOR THE FUTURE



ENVIRONMENTAL REGULATION AND THE U.S. ECONOMY

edited by Henry M. Peskin, Paul R. Portney, and Allen V. Kneese

This volume attempts to determine if there is any relationship between federal environmental regulation and the performance of the U.S. economy. The contributors also consider the effects of poor economic growth and high inflation on environmental policy objectives, as well as the long-term implications of current policy. **$15.00** hardcover, **$5.95** paperback

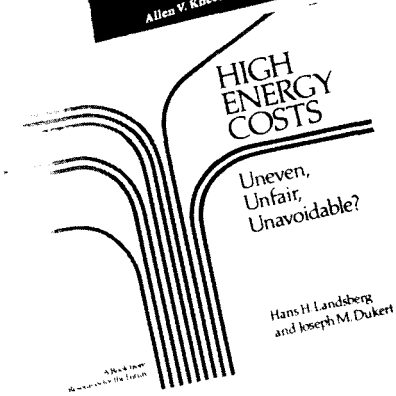


THE SOUTHWEST UNDER STRESS

National Resource Development Issues in a Regional Setting

Allen V. Kneese and F. Lee Brown

This book examines the development-environment conflict in the four contiguous states of Arizona, Utah, Colorado, and New Mexico, with particular emphasis on water supply and allocation, environmental preservation, and the future of Indian and other poverty-stricken peoples. **$30.00** hardcover, **$9.50** paperback



HIGH ENERGY COSTS

Uneven, Unfair, Unavoidable?

by Hans H. Landsberg and Joseph M. Dukert

The age-old problem of poverty is aggravated by a new burden—high and rising energy prices. But poverty is only one dimension.

What if anything should be done to ease the burden of high energy prices? Squeezed between economics and politics, the problem needs to be rescued from the confusion of false debate. Recent oil price decontrol, the looming controversy over freeing natural gas prices, and the Administration's drive to move from categorical to block grants put the issue front and center. This book offers no easy answers, but it lays out the facts, issues, and options. **$12.50** hardcover, **$4.95** paperback

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"It's life as usual in the big wildlife reserve nearby," says Orval Fouse, Supervisor, Utilities & Environmental Engineering at Gulf's Port Arthur, Texas, refinery. "The snow geese still spend a few months here each year during migration. The marshes around the refinery are still full of raccoons, otters, minks, muskrats, even some deer and bobcats.

"To me, that's very good news, because it means they're totally unaffected by the fact that, for the past 20 years, we've been refining what's called 'sour crude.'

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"Can oil and wildlife mix? They do at Gulf's Port Arthur refinery."

Snow Goose (C. Caerulescens) photographed near Gulf's Port Arthur refinery by Dr. John Tveten

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